No. 191

Office Supreme Court, U.S.
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In the United States Court of Appeals
For the Seventh Circuit

No. 12046

CITY MESSENGER OF HOLLYWOOD, INC., A California corporation, doing business under the tradename of CITY MESSENGER AIR EXPRESS,

Plaintiff-Appellant,

vs.

CITY BONDED MESSENGER SERVICE, INC., by change of name from CITY BONDED MESSENGER AND TRUCKING SERVICE, INC., an Illinois corporation, CITY BONDED TRUCKING COMPANY, INC., an Illinois corporation, THE ILLINOIS BELL TELEPHONE COMPANY, an Illinois corporation, and the REUBEN H. DONNELLEY CORPORATION, an Illinois corporation,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable John P. Barnes, Judge Presiding.

APPELLEES' APPENDIX.

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The Scheffer Press, Inc.—ANdover 3-6850

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APPELLEE'S APPENDIX

Appellees adopt as their own Appellant's Appendix with the following additions and corrections:

1. Colloquy during hearing on motion for temporary order by counterclaimants and cross complainants, Illinois Bell Telephone Company and The Reuben H. Donnelley Corp. on April 22-29, 1955.

38 By the Court: You know I have been listening to everything and that is one thing I can't figure out.

By the Witness: The corporate name.

By the Court: Which did you use, your corporate name? You have a corporate name. Why don't you use it?

By Mr. Kaplan (plaintiff's first counsel). Because we are known under that name.

By the Court: You are not allowed to call yourself anything but your corporate name in Illinois. The court can't give you that right.

By Mr. Kaplan: Is your Honor referring to the statute?

By the Court: Yes.

By Mr. Kaplan: Your Honor will note that the statute says one thing, if I may state —

By the Court: You are not authorized in Illinois to
39 use anything or to act except under your corporate name.

By Mr. Kaplan: Your Honor, we are not using the name City Messenger Express, we are not holding out the term, the trade name.

By the Court: I start out, and I see unfair trade right there; there is unfair trade right there. * * *

By the Court: These two things right there, somebody used the word "City" written out. Who did it?

By Mr. Kaplan: I don't know who did this, your Honor.

By the Court: Who did? Who used it first?

By Mr. Kaplan: They used the name "City"; there is no question that the defendant here has been using the name "City Bonded".

By the Court: If those things were being used,
41 the man that copied that just handicapped himself in a court of equity.

By Mr. Kaplan: There is no indication here that we copied it.

By the Court: Now, that is possible, that a man just gets that out of the thin air. That is possible but not probable.

2. Oral opinion of the Court.

926 By the Court:

This case was started in the year 1955 and I heard a good deal about it shortly after it was instituted, for some weeks or months. It came on for trial on Monday, February 18th. The trial was started on the morning of that day and it continued through the 19th, the 20th, the 21st, the 25th, the 26th, the 27th. The last testimony, that of Mr. Irving Mansfield, was received on March 1st.

The Court asked counsel for the parties to prepare drafts of findings of fact, conclusions of law and of the judgment order they thought their respective clients were entitled to, and asked that there be submitted briefs of their respective contentions.

As I recall it, the findings of fact, conclusions of law and judgment orders were filed on last Wednesday, March 6th, simultaneously. Reply briefs were filed simultaneously on last Friday, March 8th. I took all of those papers home with me on Friday night and I read them carefully Saturday morning.

As a result of what I had heard during the trial
927 of the case and as the result of the reading of those papers to which I had referred, I came to certain

conclusions. I have indicated that I would hear oral arguments this morning, brief oral arguments, and I have heard a brief statement by Mr. Cohen on behalf of the plaintiff.

I won't proceed at great length. I will simply indicate to you some conclusions. I think the equities are clearly with the defendant. I thought the defendants' witnesses were trying to tell the truth. Generally speaking, I think they did tell the truth. I wasn't as well impressed by the witnesses for the plaintiff, particularly the father, Ben Fullman, and the son, Sidney Fullman, and Norville (Norvin) Fullman.

I thought the Fullmans manifested a desire to overreach.

The evidence indicates that Ben Fullman, the father, and Irving Mansfield had, for a number of years, been friends, and, after listening to the evidence I have the impression that Mr. Mansfield has been successful in his business and Mr. Fullman has not been so successful.

The evidence further discloses that Mr. Ben Fullman
928 conceived the idea of establishing a new venture and undertaking and he sought to interest Mr. Mansfield in it.

He did interest him to the extent of Mr. Mansfield undertaking to put up $12,000.00, approximately — $12,500.00; I don't remember — for a half interest in the enterprise.

Then what was done for the next few months? The plaintiff would have us think that Mr. Mansfield and his company were acting merely as agents for the Fullmans and their company.

As I understand the situation and the evidence, that was not the fact. What Mr. Mansfield and his company did was done under the impression that he was engaging in a joint enterprise with this Mr. Ben Fullman and his

company. That is the impression I get from the evidence.

The Fullmans would have us believe that everything that Mr. Mansfield and his company did during that period of months was done merely as an agent for and on behalf of Mr. Fullman. I do not think that was the fact at all.

The evidence further discloses that the Fullmans repudiated the agreement which they had made for the inauguration of the joint enterprise. Whereupon, Mr.

Mansfield terminated the doing of the work which
929 he and his company had been doing for the new enter-

prise. The Fullmans, claiming to establish rights by reason of what transpired during these months, then filed a bill in this court. That is the way the matter got into this court.

I don't think any good purpose would be served by my detailing the evidence. As I have indicated at the outset, I think the equities are clearly with the defendant. I went over and read the findings of fact and conclusions of law and the judgment order which the defendants think they are entitled to. They seem to me to be about right. I will study them over further and you gentlemen will come in on Wednesday, March 13th at 10:00 o'clock and I will let you know what I think further.

3. Colloquy and Entry of Order by the Court on March 13, 1957.

930 * * * By the Court: I indicated to you gentlemen on

Monday that I was inclined to accept these findings
931 of fact, conclusions of law and the draft of judgment

order suggested by the defendant and I am still of that mind.

Now, I want you to tell me one or two things. The order 5 on the last page, that the defendant counterclaimants are entitled to an award of damages for breach of contract in the amount of $15,000.00, you conceive that to be supported by what findings, particularly?

By Mr. Mullin: That is based upon the loss of this business from Emery Air Freight.

By the Court: Yes. Where are those damages?

By Mr. Levin: In considering that phase of the case, they said that the Emery people refused to give them business because they were doing business for City, for the plaintiff. But, there was testimony that they were doing work for others in that same line of business and there was in no way any indication as to what those earnings would have been.

By Mr. Mullin: Yes, there was an indication. There were two witnesses who testified there was a loss of approximately $500.00 a week.

By Mr. Levin: Not as to that particular one account. They testified over a period of time that you were
932 doing that much business with them at this time.

By Mr. Mullin: No.

By Mr. Levin: But not that there was that much business done at that particular time.

By Mr. Mullin: That was for that particular time, so far as I can recall at the moment.

By Mr. Levin: From the standpoint of the proposition, of fraud and deceit in the situation, there was, actually, if you take the entire scope of the evidence, there was a proposition that they enter into a series of negotiations. If your Honor were to consider the entire matter, it would seem to me that they had no contract. They had never consummated the deal.

Your Honor, the defendants feel that as a result of this situation, they entered into a contract, but there was no fraud involved. In other words, there could be a breach of contract situation but there was nothing done that was fraudulent in character.

By Mr. Mullin: I don't think you want us to argue the case over again, your Honor.

By the Court: No. I think the defendant counterclaimants are entitled to an award of damages
933 for breach of contract, for fraud and deceit in the

amount to be determined by the Master heretofore appointed.

By Mr. Mullin: I don't think you have appointed a Master yet, your Honor.

By the Court: I name one right in this order.

By Mr. Levin: If your Honor please, may we ask one question? This order, enjoining the use of the name "City" and all that, that it should be restricted to the area—in other words, these people are engaged in business in California, in New York and other points, in which the defendants here have no activities. It certainly shouldn't restrict the use of their corporate name throughout the country.

By the Court: What do you say to that?

By Mr. Mullin: We have no objection to using it outside of the Middle West area.

By Mr. Levin: In other words, you operate in the State of Illinois.

By Mr. Cohen: The condition is, I believe, that they operate within a radius of 50 miles of 193 North LaSalle.

By Mr. Mullin: That is right, doing business with co-operating messenger services in Wisconsin and so 934 forth.

By the Court: Well, within Chicago or a 50-mile radius thereof. You can fill that in. Is there anything else?

By Mr. Mullin: All right.

By the Court: Now, where is the Telephone Company?

By Mr. McBurney: Your Honor, I have prepared a separate order.

By the Court Let me see it.

(Document handed to the Court.).

By Mr. McBurney On behalf of the Illinois Bell Telephone Company and the Reuben H. Donnelley Corporation, Mr. Mullin and I have agreed as to the language in the order.

I did not have an opportunity to take it up separately with Mr. Cohen. He now has a copy. The substance of this is to limit the telephone company listings in the telephone directory and the Donnelley Corporation listings in the classified directory, in line with the provisions of the order which your Honor just entered, specifically Paragraph 1 of the judgment order, directed to the other parties in this case.

By the Court: When can you make the change in
935 this?

By Mr. Mullin: I can do that immediately, your Honor.

By the Court: Rewrite the first page. Rewrite the first page so it is the findings of fact, conclusions of law and the judgment order of the Court.

By Mr. Levin: If your Honor please, one more request on the part of the plaintiff—

By the Court: Have you given copies to the other side?

By Mr. McBurney: Yes, sir.

By the Court: What is it, Counsel?

By Mr. Levin: If your Honor please, in the second provision in the proposed judgment order is the language that defendants are entitled to an order causing plaintiff to surrender, at its direction, all matter bearing the name, style or mark including the word "City," or the phrase "City Bonded Messenger" or "City Messenger."

The first section restricts us particularly within this area.

By the Court: Would it be used just outside of this district?

By Mr. Levin: We can use that material in other parts.

936 By Mr. Mullin: With Chicago addresses?

By Mr. Levin: You can X that part out because it has all the other addresses.

By Mr. Mullin: I hate to take the chance of permitting them to do that.

By the Court: I will take that chance. If they come within a 50-mile radius and use that name, they will be in trouble.

By Mr. Mullin: That includes—

By the Court: 50 miles.

By Mr. Levin: It is 50 miles from Chicago.

By the Court: 50 miles within the radius of Chicago, if I know my geography.

• • •

4. Colloquy and action by the Court on defendants' motions to show cause why plaintiff should not be held in contempt for violation of the judgment injunction issued March 13, 1957 and the Order of Court entered April 8, 1957 commanding plaintiff to file additional security in the amount of $7,500.

3 • • •

10 By the Court: I have thought about this matter, gentlemen. I am ready to take action here. I am afraid it will not please either side, but I think it is wisest.

This case, how long were we trying this case?

By Mr. Mullin: It was about eight days, I think.

By the Court: Well, we spent about eight days hearing about the controversy between the parties. The Court used the best judgment it had when he decided the 11 case, good, bad or indifferent, but the best the Court had.

The Court then thought and still thinks that that case was properly decided. The Court thinks that when this case is considered by the reviewing court, the judgment of this Court will be affirmed, if the waters are not muddied by these collateral matters.

If I send somebody to jail today, he will go up in the

Court of Appeals, and they may think they are getting pressure, and you may get snap judgment. That isn't what you want.

You want your case heard. I am morally certain, when that case is heard in due course, it will be affirmed.

I think it would be bad judgment to take up contempt orders and one thing or the other. You might get snap judgment.

That judge down there will say, "I want to look into this," I am sure of that.

Give that court an opportunity to review that matter and try that case on its merits. I think it will be affirmed.

I am not sure about your opponents but what they want to muddy up the water a little bit. That wouldn't be surprising. There wouldn't be anything wrong about that from their part.

I am going to enter these motions and continue them generally. You devote your energies in trying that case to the Circuit Court of Appeals. I think you will win it, if you don't muddy the waters with these collateral issues.

By Mr. Mullin: What it amounts to, your Honor—

By the Court: It amounts to just what has been going on ever since the plaintiff started the suit in this court, just exactly the same thing.

By Mr. Mullin: Does that mean then we do not continue with the accounting?

By the Court: Well, if I were you, I would get this case through the Appellate Court.

By Mr. Mullin: That is what they want—I mean they want to delay this thing.

By the Court: You want to win your lawsuit, and don't get it muddied up with collateral matters.

• • •

6. Additions to and corrections of Appellant's Appendix page 49-50:

TESTIMONY OF IRVING MANSFIELD

40 * * * Q. Now, directing your attention to a lawsuit that was pending in the Municipal Court of Chicago, No. 55 M 2286, do you know who the parties to that lawsuit were?

By Mr. Mullin: I will object to that. I fail to see what another lawsuit has to do with this case.

By Mr. Cohen: If your Honor please, I hope to be able to connect up that litigation with the present litigation, and I think some of the facts brought out in that case will have pertinence here.

By Mr. Mullin: Your Honor, I believe that case has been settled, and the facts that were brought out in that case have nothing to do with the facts in this case. This is a separate lawsuit.

By Mr. Cohen: I think it has a bearing here, and if I am permitted I would like to proceed. If the Court then feels it is not pertinent, I will offer no objection
41 to striking the testimony.

By Mr. Mullin: Has it been settled or not?

By Mr. Cohen: Yes, it has been settled.

42 By the Court: Well, I don't want to try any other lawsuit if it is unnecessary. Does anybody plead res judicata or anything of that kind?

By Mr. Mullin: Your Honor, it has been settled, and I don't believe there was more than an iota of evidence offered at that time. I did not represent the defendant in that lawsuit, but I fail to see what bearing that lawsuit could have on this lawsuit; merely to clutter up and extend it.

By Mr. Cohen: No, I don't think so. I think the facts of record in that case are material to bringing out my case here.

By Mr. Mullin: Can't you bring out the facts in this case, whatever you like?

By Mr. Cohen: All right.

I will withdraw that question.

* * * *

43 * * * Q. Did you from time to time render bills for these services, bills to the plaintiff corporation here?

A: The first couple of months we did, but I had conversation with Mr. Fullman, and inasmuch as we were entering into an agreement to go into business together he said, "You know I haven't any money to pay any of these bills, and inasmuch as we are going into business I would suggest that you hold them to a later date until we go into business together."

By Mr. Cohen: If your Honor please, I move
44 the last portion be stricken, and just the direct answer left.

* * * By Mr. Mullin: The answer explains it.

By Mr. Cohen: Your Honor, he said he did from time to time, and then it could stop. Anything after that is definitely not responsive.

By the Court: Oh, I think I will let the answer stand.

By Mr. Cohen: That is all. I will introduce at this time as Plaintiff's Exhibit 1 this air bill.

Is there any objection?

By Mr. Mullin: I have no objection to that, but I would like to clarify some of the answers to questions that were made here, if I may.

By the Court: It may be received.

(Said document, so offered and received in evidence, was marked Plaintiff's Exhibit 1.)

By the Court: Go ahead.

45 By Mr. Cohen: You can (can't) introduce him as a witness here. He is a hostile witness.

By Mr. Mullin: Are you objecting?

By Mr. Cohen: Yes, I object.

By the Court: The rule provides for it. Is says, "may be cross examined by the adverse party only about the subject matter of his examination in chief."

By Mr. Mullin: Right.

* * *

8. Additions to and corrections of Appellant's Appendix page 51-52.

51 * * * By Mr. Mullin:

Q. Thereafter you stated you had additional conversations and exchanged correspondence. Will you take them in the sequence in which they occurred and tell us about each interchange of correspondence and the meetings.

A. Well, there was an exchange of correspondence and many telephone calls back and forth. Mr. Ben Fullman invited me to come to Los Angeles and see the operation out there. That was in the early part of August. At the time I couldn't get away, but I arranged to fly out to California in the early part of Septem-

52 ber. I think it was over Labor Day.

Q. What year?

A. 1954 that was.

Q. What occurred there in Los Angeles then?

A. When I arrived in Los Angeles I contacted my brother who was a practicing attorney and a CPA out there, and I asked him to—he had already known about this proposition we were entering into, and I asked him to meet me and go over to Mr. Fullman's office. I think that was located then at 1414 Cole Place, which we did. We went over there together that day.

Q. What occurred there?

A. We sat down, my brother and Mr. Ben Fullman, and we discussed the proposition of going into a partnership. At first he wanted to merger City Bonded Messenger Service & Trucking Service of Chicago with City Messenger of Hollywood, at that time.

By Mr. Cohen: I will object to that.

By the Witness: I wasn't too familiar—

By Mr. Cohen: I think the answers that the defendant or the witness is giving are not in proper order.

53 There should be a relating of the conversations.

By Mr. Mullin: He is relating the conversations.

By Mr. Cohen: He is not relating the conversations, what he said and what somebody else said.

By the Court: If it is possible have him state what he said and what the other person said, and the time and place.

By the Witness:

A. This took place in Mr. Fullman's office in Los Angeles. My brother Elias was present at the time, and Mr. Ben Fullman suggested a merger of the two companies. I didn't know too much about their operation out there.

By Mr. Mullin:

Q. Do you recall the specific words or approximately the specific words you used?

A. That he would like to see the two companies merged. The City Bonded Messenger Service and the City Messenger of Hollywood, he meant. I asked advice of my brother at the time and he said, "Well, first, I don't know anything about their financial conditions

54 and, secondly, I wouldn't suggest a merger."

So I think my brother asked him for a financial statement at the time, and Mr. Ben Fullman gave my

brother a financial statement. Of course he, being a certified public accountant, looked it over. I was not familiar and wouldn't know too much about it myself. He said to me in the presence of Mr. Ben Fullman, "These people have no assets. How can you enter into an agreement of this kind?"

Mr. Ben Fullman said, "True, we have no assets."

Q. Then what happened?

A. That immediately put a damper on the merger part of the proposition, so Mr. Ben Fullman said, "Well, in what other way can we get together?" So my brother suggested, oh, he already had that, that Mr. Fullman had already had the CAB permit at the time.

By the Court: Already had what?

By the Witness: The CAB permit.

By Mr. Mullin: Civil Aeronautics Board?

By the Court: Yes.

By the Witness:

55 A. (Continuing) He mentioned at the time that my brother wanted to form a new corporation, and Mr. Ben Fullman informed them the CAB certificate was not transferrable, and we could not enter into an agreement of that kind. My brother suggested that I could buy into the present corporation of City Messenger of Hollywood.

By Mr. Mullin:

Q. Were there any specific terms discussed at that time?

A. Mr. Ben Fullman said that it cost him in the neighborhood of twelve to fifteen thousand in traveling expenses and so forth, and legal fees, to obtain the CAB permit. We agreed that I would put up twelve thousand or twelve thousand five hundred.

Q. Dollars, that is?

A. Yes, sir, surely. And they would put up—the $12,500.00 I would put up, and they would put up the assets and the CAB permit of City Messenger of Hollywood.

Q. What were you to receive for that $12,500.00?

A. We were to form a corporation and I was to receive 50 per cent of the stock.

Q. Well, what happened after that?

56 A. Well, it was agreed upon by Mr. Ben Fullman and myself that would be the deal.

* * *

9. Additions to and corrections of Appellant's Appendix page 59:

TESTIMONY OF BENJAMIN FULLMAN

98 * * * Q. Did Modern Delivery Service develop any marks or anything else that did distinguish it from other companies during the time that you were associated with the company?

A. Yes, we did.

Q. What marks were developed?

99 A. First, in 1937, we developed a large word in print, City, with a space in the middle of the letters and it had the word "Bonded" put in the space.

Then, in 1946, we did away with that and we had an advertising agency develop the script, City, with the character of a boy stepping through the C.

Q. Can you give the Court the name of the advertising agency that developed this last mark for you?

A. The Perritt Company.

Q. And who is the executive officer of that company?

A. Well, Mr. Perritt. He is still connected with it, I believe. I believe he is president of the company.

By Mr. Mullin: Your Honor, I will object to this entire line of questioning. There has been no chain of

title established between Modern Delivery Service and the plaintiff in this case.

By Mr. Cohen: I will come to that, if your Honor please.

100 By the Court: You are going to undertake to connect it up?

By Mr. Cohen: I will connect it up.

By the Court: How are you going to do it?

By Mr. Cohen: I have in my files here a sale or a lease of the name City Messenger.

By Mr. Mullin: And I have a copy of the transcript of the bankruptcy of the Modern Delivery Service.

By the Court: Of what?

By Mr. Mullin: The bankruptcy of Modern Delivery Service.

101 By Mr. Cohen: Given the opportunity, I will show it, if your Honor please.

By the Court: Go ahead.

By Mr. Cohen: If the Court will excuse me a moment—

By the Court: Yes.

By Mr. Cohen: Miss Reporter, will you please mark this Plaintiff's Exhibit 2 for identification?

(Thereupon said document was marked Plaintiff's Exhibit 2 for identification.)

By Mr. Cohen: And will you please mark this Plaintiff's Exhibit 3 for identification?

(Thereupon said document was marked Plaintiff's Exhibit 3 for identification.)

By Mr. Mullin: I will reserve the right to object to these as not complete signatures, although it states it is a true copy and so forth. But, you may introduce them for what they are worth.

By Mr. Cohen:

Q. Mr. Fullman, I show you Plaintiff's Exhibit 2
102 bearing the title "Minutes of Special Meeting of the Board of Directors of Modern Delivery Service," and ask you if you have ever seen that document.

A. Yes.

Q. Will you tell the Court where you saw that document?

A. In my office at 1120 South Olive Street, Los Angeles, California.

Q. In what year?

A. 1947.

Q. Where did that particular document come from?

A. Well, it came out of records.

Q. Out of your personal records?

A. No; out of the records of Modern Delivery Service.

Q. And where are those records now?

A. I don't know where those records are, whether they have been destroyed or are still in effect.

Q. Where has this lodged since the time that it was executed, this Plaintiff's Exhibit 2?

A. That was in the hands of Sam Chess and Sidney Fullman.

Q. I direct your attention to the signature under the word "Approved," and the typewritten "Ben Full-
103 man, President." I direct your attention to that signature and ask you whether you recognize it.

A. Yes. It is my signature.

Q. Will you tell the Court when that signature was affixed to that document?

A. It was affixed on the 29th of April, 1947.

Q. Now, was, in fact, a special meeting of the Board of Directors of Modern Delivery Service held on that day?

A. Yes.

Q. And does that document represent a true and correct representation of the events of that day?

A. Yes.

Q. Now, I show you Plaintiff's Exhibit 3 and ask you whether or not you have ever seen that instrument before.

A. Yes.

Q. When did you see that instrument?

A. When it was made.

Q. When was it made?

A. That was made in April, 1947.

Q. Can you tell the Court where that document or instrument comes from?

A. Well, that came from the records of Fullman 104 and Chess, Sam Chess and Sidney Fullman.

Q. And has it lodged there from the time that it was executed until now?

A. Yes.

Q. I direct your attention to the written signatures that appear on that instrument and ask you whether or not you recognize those signatures.

A. Yes, I do.

Q. Whose signatures are they?

A. Well, there is Sidney B. Fullman's signature and Sam Chess' signature and C. J. Cullom.

Q. Who is C. J. Cullom?

A. She was the secretary of the corporation at the time.

Q. Does this instrument truly reflect the events and purposes of that document?

A. Yes.

Q. Now directing your attention to on or about April 29, 1947, did Modern Delivery Service, as a fact, sell or lease the name of City Messenger Service to Fullman and Chess?

A. Yes.

Q. Do you know of your own knowledge whether
105 or not Modern Delivery Service received any consideration for the execution of these documents?

A. Yes, they did.

Q. Will you tell the Court how much it was, or, what was the consideration?

A. It was twenty-five hundred and some odd dollars.

Q. And it was, in fact, paid?

A. Yes, paid in cash.

Q. Now, do you know of your own knowledge whether or not Fullman and Chess operated the name City Messenger Service?

A. Yes, they did.

Q. Do you know of your own knowledge how long they operated?

A. Well, they operated right along, and then, in 1951, they incorporated into City Messenger of Hollywood, Incorporated, and it is still in operation.

106 By Mr. Cohen: If your Honor please, I will offer Plaintiff's Exhibits 2 and 3 in evidence.

By Mr. Mullin: I will object to the introduction of these, your Honor. They are not fully signed. There are spaces that are unsigned. They purport to be a true copy.

By Mr. Cohen: Well, Eli, you are not going to object on that score. You were talking about it.

By Mr. Mullin: But they are unsigned.

By Mr. Cohen: You were not going to object as to the genuineness of that document if I could prove up the balance—

By the Court: What is your objection?

By Mr. Mullin: My objection is to the introduction of those documents as true copies. They are unsigned. He hasn't established any background for them except through a prejudiced witness.

If he can produce the corporate minute books or any of the other records of the corporation, I will withdraw my objection.

107 By the Court: Is this the corporation you say went bankrupt?

By Mr. Mullin: Yes.

By the Court: When?

By Mr. Mullin: The debtor's petition is dated July 15, 1948. That is the date it was filed.

By the Court: Well, what is this offered as, as part of the minutes?

By Mr. Cohen: That is offered as a particular document showing the sale of the name, the sale of the use of the name City Messenger, from Modern Delivery to Sam Chess and Sidney Fullman.

By the Court: Well, the minutes purport "The agreement attached hereto." There isn't any agreement attached hereto.

By Mr. Cohen: If your Honor please, when I took over the file from the former counsel, that was the condition that I found it in.

By the Court: Well, I know, but —

By Mr. Cohen: It may be, if your Honor please,
108 that that was attached to it; I don't know.

By the Court: Well, this paper at one time evidently had something attached to it which has been taken from it. Do you see that (indicating)? There is no such place up there (indicating).

By Mr. Cohen: It could be, if your Honor please, that one is an original and one is a copy because now there is on one no indication whatsoever that it is not the original.

By the Court: There is an indication on this one that it isn't complete. There is an indication, for instance, on

Plaintiff's Exhibit 2 that it isn't complete because it says, "The agreement attached hereto."

By Mr. Cohen: Well, let us ask the witness.

By Mr. Cohen:

Q. Mr. Fullman, what agreement, if —

By the Court: Now you are contradicting a written instrument.

By Mr. Cohen: Well, I am not.

By the Court: Well, it says, "The instrument at-
109 tached hereto."

By Mr. Cohen: I was going to ask Mr. Fullman whether or not the Plaintiff's Exhibit 3, whether that copy was —

By the Court: Attached.

By Mr. Cohen: — was attached, or whether the original of that copy was attached.

By the Court: Well, you ask him that and see what he says. Not as to the rest of them but as to whether or not this one was.

By Mr. Cohen:

Q. Now, Mr. Fullman, Plaintiff's Exhibit 3, was that or was that not attached to Plaintiff's Exhibit 2? Do you know what I am talking about as exhibits?

A. Yes. These two items here, one of them was made in two copies. One we gave to Chess, Fullman and Chess, and the other one we kept at the office there, at the Modern Delivery Service.

By the Court: Well, he hasn't answered your question.

The question was whether Plaintiff's Exhibit 3 was
110 attached to Plaintiff's Exhibit 2.

By the Witness: No, I don't believe those two were attached together.

By the Court: I don't either. The objection is sustained.

By Mr. Cohen: Well, now, if your Honor please—

By Mr. Mullin: I, therefore, move to strike all the testimony relating to the mark prior to the Modern Delivery Service, or prior to City Messenger of Hollywood, Inc.

By the Court: Oh, let it stand.

111 By Mr. Cohen:

Q. Mr. Fullman, do you know of your own knowledge whether or not Modern Delivery Service ever sold for consideration the use of the name City Messenger Service, to anyone?

A. Yes.

Q. To whom did they sell it?

A. They sold it to Sam Chess and Sidney Fullman.

Q. And for what consideration?

A. They got a little over $2500 for it.

Q. Modern Delivery Service received that money?

A. Modern Delivery Service received that money.

By Mr. Cohen: Will you mark this Plaintiff's Exhibit 4 for identification?

(Thereupon said document was marked Plaintiff's Exhibit 4 for for identification.)

By Mr. Cohen: Incidentally, your Honor, this Plaintiff's Exhibit 4 has been stipulated to, as to the genuineness.

By Mr. Cohen:

Q. I show you Plaintiff's Exhibit 4 and ask you whether or not you have ever seen that paper or 112 exhibit.

A. Yes.

Q. When did you see that?

A. When it was made, December, 1937, the first of December—about the latter part of Novemmber, it was made, in 1937.

Q. And at whose direction was that instrument made?

A. At my direction.

Q. Was that ever sent through the mails or given to anyone?

A. It was sent through the mails.

Q. How many, if you recall?

A. We sent out a thousand of them.

Q. And in what area of the United States was that sent?

A. In and through Los Angeles and Hollywood.

Q. Directing your attention to the heading of this, "City," with the word "Bonded" in between, was that your mark or identification at that time?

A. Yes, it was.

Q. Do you know how long you used that?

By Mr. Mullin: I object to the use of the word "you." To whom are you referring?

By Mr. Cohen: I am sorry.

113 By Mr. Cohen:

Q. What was the name of the company at that time?

A. It was City Messenger and Express Company, Modern Delivery Service, doing business as City Messenger and Express Company.

114 Q. What was the name of the commpany at that time?

A. The City Messenger Express Company, Modern doing business as City Messenger Express Company.

Q. Was that that company's mark or identification at that time?

A. Yes.

Q. And for how long was it that company's mark or identification?

A. That was about July, 1937.

Q. From that time until when?

A. Up until 1946 we used that mark.

By The Court: Who is "we?"

By The Witness: The Modern Delivery, City Messenger and Express Company.

By The Court: Well, was it a company or wasn't it? Who was it, a partnership?

By The Witness: No. Modern Delivery Service was a corporation, and City Messenger Express Service at that time was an assumed name.

By Mr. Cohen:

Q. At that time the corporation was doing business under an assumed name?

A. Yes.

115 By The Court: Are we going to have any charters or articles of incorporation?

By Mr. Cohen: Well, if your Honor please, in the relatively short time I was able to familiarize myself with this case I was unable to accomplish many things.

By The Court: It is not a short time this case has been pending. It is over a year and a half.

By Mr. Cohen: I respectfully submit to your Honor that when I originally took over this matter—

By The Court: April 19, 1955.

By Mr. Cohen: When I came into this matter on the 15th of January, 1957, I honestly had the feeling I could settle this matter with Mr. Mullin and his clients. I find I am unable to do that, and as I advised the Court on Friday, there were many areas where I felt I was not completely prepared.

By the Court: Now, it is your client's question of diligence or negligence, and this case has been set for

116 this time for a long time, and I believe the defendants have some rights. The defendants do have some rights, you know. They have a right, when somebody started suit against them, to have it disposed of within a reasonable time.

Certainly from April 19, 1955 to February 18, 1957 is a reasonable time. That is a reasonable time to get ready if you start a lawsuit.

By Mr. Cohen: Well, the client, if your Honor please, is not responsible for the preparation.

By The Court: Yes, he is, exactly so.

By Mr. Cohen: He relies upon his attorney.

By The Court: He is just exactly responsible for it. I am just inquiring now whether I am going to see any articles of incorporation or anything of that sort, or are we just going to talk loosely about a company that called itself so-and-so, and then used some other name?

By Mr. Cohen: At this time I am not able to produce those documents.

By Mr. Mullin: All this testimony relates to some-
117 thing that took place before the present plaintiff in the case was even in existence, and they have not established any chain of title there. I don't see how we can even consider it.

By Mr. Cohen: If your Honor please, I think we have established a definite chain. Mr. Fullman here has testified that officers of the plaintiff corporation included himself, Sidney and Elliott Fullman, Norville (Norvin) Fullman, and I think since Sidney Fullman was a person who bought and used the name of City Messenger Service there is definitely a chain of title.

By The Court: Well, when you give something to a corporation you make a conveyance if you have something to give. Aren't you going to be able to show anything of the kind?

By Mr. Cohen: I have nothing other than the documents I proposed to use, and I have offered them in evidence to indicate the sale from Modern Delivery Service to this partnership of Fullman and—

118 By The Court: But you offer what is supposed to be a transcript of a corporate record. It is not complete, but cites on its face something should be attached, and it is obvious that something has been torn from it up in the corner.

Then you produce another paper purporting to be executed to the corporation, the corporation having a president, vice-president, and the only execution is by the secretary. Ordinarily the secretary does not bind the corporation.

By Mr. Mullin: Your Honor, I would like also to call your attention to the suit as filed by City Bonded doing business as City Transportation Company and City Messenger. How can they have signed other names and permitted the same corporation to use it, and then go into bankruptcy?

That is why I questioned the authenticity of that document.

By Mr. Cohen: If your Honor please, I will make every effort to see if I can find the document of the
119 Modern Delivery Service to show there was in fact a sale at that time.

May I go forward?

By The Court: Go ahead, but I don't see where you are getting.

Go ahead.

120 By Mr. Cohen:

Q. Directing you attention to the heading and the word "City." Was that the corporation's mark at that time?

A. Yes.

Q. And for how long was that the corporation's mark?

By The Court: Where is it? Where is the mark?

By Mr. Cohen: If your Honor please, I am relating

to Plaintiff's Exhibit 4 which the witness has in his hands.

By the Court: I see. Well, I haven't seen it.

(Document handed to the Court.)

By Mr. Cohen:

Q. Mr. Fullman, I will ask you—

By The Court: Go ahead.

By Mr. Cohen: If your Honor please, the plaintiff's exhibit is only the one on the upper side. I have not attempted to introduce the others.

By Mr. Cohen:

Q. I direct your attention to the reverse side of
121 Plaintiff's Exhibit 4 and ask you, when were those cards printed, if you know?

A. They were printed in 1938.

Q. Were they distributed?

A. Yes.

Q. In what area or what community were they distributed?

A. In Los Angeles and Hollywood, California.

Q. And these also contain the mark of the corporation?

A. Yes.

By Mr. Cohen: I wiill offer Plaintiff's Exhibit 4 for identification in evidence.

By The Court: Any objection?

By Mr. Mullin: No objection, Judge.

By Mr. Cohen: No, this has been stipulated.

By Mr. Mullin: I might say the only objection is that he still has not established a chain of title between these documents and the present plaintiff. Except for that reservation I have no objection.

* * *

122 * * * By Mr. Cohen:

Q. Mr. Fullman, with what company were you associated in 1951, in the latter part of 1951?

A. With City Messenger of Hollywood, Incorporated.

By The Court: I didn't hear that.

By The Witness: City Messenger of Hollywood, Incorporated.

By Mr. Cohen:

Q. I will show you Plaintiff's Exhibit 5 and ask you whether you have ever seen that letter before this?

A. Yes.

Q. Where did you see it, where did you first see it?

A. Well, I dictated this letter on September 25, 123 1951.

Q. I show you page 2 of this letter and ask you whether or not you recognize that signature?

A. Yes.

Q. Whose signature is it?

A. That is Irving's, Irving Mansfield's.

Q. Just a moment ago you said you dictated that letter?

A. That's right.

Q. Is that correct?

A. Yes.

Q. Were you in Chicago at that time or were you in Los Angeles?

A. No, I beg your pardon, I did not dictate this letter.

Q. Did you receive that letter through the mails?

A. I received this letter through the mails.

Q. And that was in response to what?

A. Well, that was in response to a request I had made to Irving Mansfield to settle up a cooperative ad that our company, City Messenger of Hollywood, and Mercury Messenger Service in New York and City Messenger in Chicago had bought from the Diners Club. I believe 124 it was about six or seven hundred dollars.

Q. Is that your stationery?

A. No, that is not my stationery.

Q. Where has his letter been since September 25, 1951?

A. I believe we got that in New York, the Mercury Messenger people.

10. Additions to and corrections of Appellant's Appendix, page 69:

154 By Mr. Cohen:

Q. I present to you Plaintiff's Exhibit, Group Exhibit 9-A and -B, and ask you whether or not you have ever seen those documents.

A. Yes.

Q. What are they?

A. That is a certificate of business, doing business under fictitious name for City Messenger Express Company.

Q. That is Exhibit -A of Group Exhibit 9, is that right?

A. Yes.

Q. And -B?

A. This is a copy of our articles of incorporation of Modern Delivery Service.

By Mr. Mullin: I object to that. The document speaks for itself, and I think the explanation given was incorrect.

By the Court: Objection sustained.

By Mr. Cohen:

Q. I direct your attention to — no, I will withdraw that.

By Mr. Cohen: I will offer Group Exhibit 9-A and 9-B in evidence. These two documents bearing the

155 hand and seal of Harold J. Ostly, Clerk of the Superior Court of the State of California in and for the County of Los Angeles, by R. Luskin, Deputy.

I present that on the basis they are certified copies.

By Mr. Mullin: We do not object to the authenticity of the documents, but object to the introduction in evidence, on the ground Modern Delivery Service has still not been connected up in the chain of title with the plaintiff in this case.

By the Court: Let me see it.

(Whereupon documents were handed to the Court.)

By the Court: They may be received subject to the objection, gentlemen.

158 Q. During or at any of these conversations which you related to the Court previously, did you and Mr. Mansfield ever reach a firm agreement, understanding or contract concerning City Messenger Air Express?

A. Well, I don't understand what you mean about the contract.

Q. I will repeat the question or rephrase the question. The defendant corporation and Mr. Mansfield allege in their answer that you, together with others, represented that you and the defendant corporation or the defendants themselves would join in the ownership and operation of an air freight forwarding business to be known as City Messenger Air Express.

My question is this: During any of those conver-
159 sations which you have related to the Court before, was ever such an understanding or agreement reached?

By Mr. Mullin: I will object to that. He is asking for a conclusion. He can testify as to any facts, but not as to a conclusion.

By the Court: Yes. Sustained.

By Mr. Cohen:

Q. Were any of your conversations specific in terms of any arrangement or contract?

By Mr. Mullin: I will object. He is leading the witness. This is direct testimony.

By the Court: Sustained. You can ask him if he has told all of the conversations they had about it.

By Mr. Cohen:

Q. As you have related these conversations previously,

have you told the Court fully and completely what transpired?

A. Yes, I have. In essence, I have given the highlights of the various conversations we had.

Q. Mr. Fullman, did you ever have the authority
160 from your corporation to enter into an agreement concerning joint ownership of the operation of City Messenger Air Express?

By the Court: You are asking him a conclusion. If he answered, that would be a proper question of law. Sustained.

By Mr. Cohen No further direct.

* * *

11. Additions to and corrections of Appellant's Appendix, pages 70-72:

163 Q. Sidney Fullman was president prior to that?

A. Yes.

Q. What was Sidney Fullman's position while you were president?

A. He was vice-president.

Q. Now, you testified, Mr. Fullman, that you were associated with Cannonball Messenger and Delivery Service and with Twentieth Century Delivery Service.

You further testified that these two companies were located in Chicago.

Were you ever associated with either one or both of these companies in any location other than in Chicago?

A. At the same time I was in Chicago?

Q. No. I asked you, were you ever associated with either Cannonball Delivery Service or Twentieth Century Delivery Service, in any location other than in Chicago?

A. Well, Twentieth Century Delivery Service was in Los Angeles prior to that. I was associated with them there. And Cannonball was an assumed name for them in one of their divisions.

Q. That was an assumed name for Twentieth Century?

A. Yes. That was prior to the time that I was
164 connected with these companies in —

Q. And where were they located?

A. Prior to those companies, I was located in Chicago.

Q. No. I said prior to their location here in Chicago, where were they located?

A. Twentieth Century, is that what you said?

Q. Yes..

A. They were located in Los Angeles.

Q. Twentieth Century, then doing business as Cannonball, was located in Los Angeles?

A. No. Twentieth Century Delivery Service was a company that operated delivery service from Santa Barbara to the Mexican border and as far east as San Bernadino and they operated branches in Santa Barbara, San Diego, Long Beach, Riverside, Santa Ana, and Pasadena and Cannonball Messenger and Delivery was a special delivery service.

Q. And where did they operate?

A. Locally in Los Angeles.

Q. What was your connection with these companies?

A. I was vice-president.

Q. You were vice-president?

A. Yes.

Q. Did you own any stock in these companies?

165 A. Yes, I did.

Q. Were you a majority stockholder?

A. No.

166 Q. How did you terminate your association with these companies in California?

A. Well, it was a freeze-out.

By Mr. Cohen: Objection.

By the Court: I can't hear you.

By Mr. Cohen: The question was, how did he terminate his association. If your Honor please, the direct questioning didn't touch upon anything in California until Mr. Fullman came there or went there in 1938, I believe it was.

By Mr. Mullin: He brought out that he was connected with Cannonball and I am bringing out now where it was.

By the Court: This gentleman is not on adverse examination. He was put on as a witness.

By Mr. Cohen: That is true, your Honor.

By the Court: And as I understand it, from the time he started he was executive of the plaintiff company.

By Mr. Cohen: Correct, sir.

By the Court: The examination can be quite
167 broad.

By Mr. Cohen: Granted, but —

By the Court: The objection is overruled.

By the Witness:

A. It was a freeze-out.

By the Court: It was what?

By the Witness: A freeze-out. The United Parcel Service bought controlling interest in the company and my job was terminated, so there was nothing for me to do except to take money from my stock and leave.

By Mr. Mullin:

Q. And then you came to Chicago?

A. Yes.

Q. What was the year, then, that you came to Chicago?

A. I believe, if my memory serves me correctly, I believe I came here in 1935.

Q. When did you terminate your relationship with Twentieth Century and Cannonball in California?

A. 1934.

By the Court: Speak up. What? Keep your voice
168 up. I can't hear you.

By the Witness:

A. In 1934.

By Mr. Mullin:

Q. Did Cannonball Delivery use any symbols or trade marks or service marks that you know of in California?

By Mr. Cohen: Objection. If your Honor please, that is beyond the scope of the direct examination. In fact, if you Honor please, it is far beyond.

By the Court: No. I have tried to explain to you a bit ago that this man was a high executive officer of the plaintiff at the time the suit was brought. Therefore, he is put forward, I assume, as one of its leading witnesses.

By Mr. Cohen: Correct, sir.

By the Court: Therefore, he is subject to broad cross examination.

By Mr. Cohen: Not beyond the time of —

By the Court: I have ruled, now, and I am not 169 going to listen to argument upon that simple matter.

By Mr. Mullin:

Q. Will you answer the question?

By the Witness: Would you read the question to me again?

(Thereupon the question was read as above recorded.)

By the Witness:

A. I believe they had the word "Cannonball" in script. The script is described this way: The letters were large at the beginning, and when it got to the last letter, the "L", they became smaller and showed the script in the form of speed, by lines.

By Mr. Mullin:

Q. Was there what appears to be a rotating cannonball at the end of the last letter of the word Cannonball?

A. I don't remember. I don't recall.

By Mr. Mullin: Miss Reporter, will you mark this Defendant's Exhibit 5 for identification?

(Thereupon said document was marked Defendants' Exhibit 5 for identification.)

170 By Mr. Mullin:

Q. I show you an advertising folder with a service mark appearing thereon and ask you if you recognize it.

A. Well, I have seen it before.

Q. Yes. Was that the service mark that Cannonball in California used?

A. I wouldn't know unless I could compare the two of them.

Q. Well, you testified that you remembered it and you described it to us. Now, is that it? You should recognize it.

A. I didn't say that.

By the Court: I can't hear you, sir.

By the Witness:

A. I didn't say that. I said I recall it and I tried to describe what I remembered.

171 Q. Well, I am showing you a mark and I am asking you if that is the mark you remember.

A. No. It looks familiar. If I could compare the two of them I could possibly say they were similar, if they were, but I am not saying they are unless I can compare the two of them.

Q. Well, based upon your memory. You said it looks familiar.

A. It looks familiar.

Q. All right.

By Mr. Mullin: Your Honor, I ask that this be admitted into evidence as Defendants' Exhibit 5.

By Mr. Cohen: Objection.

By Mr. Mullin: Your Honor, I expect to show this is the mark that was used in Chicago. I expect to show that it is one and the same.

By Mr. Cohen: If your Honor please, the mark of the Cannonball is not in issue here.

By the Court: Well, you better hold it until you show that.

By Mr. Mullin:

Q. Now, when you came to Chicago in 1935 you started a messenger and delivery service under the name of
172 Twentieth Century Delivery Service and Cannonball Messenger and Delivery Service, is that correct?

A. Yes.

Q. Did you use any of these symbols, trade-marks or service marks that had been used by the Cannonball in California?

By Mr. Cohen: Objection.

By Mr. Mullin:

Q. (Continuing) In your business here in Chicago?

By Mr. Cohen: Objection, if your Honor please.

By the Court: Sustained.

By Mr. Mullin:

Q. When you terminated your relationship with Cannonball and Twentieth Century in California, did you receive any assignment of any rights or trade-marks, symbols, trade names of the California companies?

By Mr. Cohen: Objection.

By the Court: He may answer.

By Mr. Mullin:

Q. You may answer.

By the Witness: Will you please read the ques-
173 tion?

(Whereupon the question was read as above recorded.)

By the Witness:

A. My services were just terminated.

By the Court: Well, can you answer the question? Answer the question.

By the Witness: Will you please read the question?

(Whereupon the question was read as above recorded.)

By the Witness:

A. No.

174 By Mr. Mullin:

Q. Then you had no authority for using the names Twentieth Century Delivery or Cannonball when you started your business here in Chicago, is that correct?

By Mr. Cohen: Objection.

By Mr. Mullin: I am cross examining.

By the Court: He may answer.

By Mr. Cohen: If your Honor please, the question is not relative to any matter before the Court.

By the Court: Oh, yes, it is.

By Mr. Cohen: The issue here is whether or not we have the right to use the name City Messenger Air Express in the Chicago community.

By Mr. Mullin: I am asking him.

By Mr. Cohen: And the marks.

By Mr. Mullin: We are trying to bring out the history here.

By the Court: I am holding with you.

By Mr. Mullin: Would you answer?

By the Witness: Will you please repeat the question?

175 (Thereupon the question was read as above recorded.)

By the Witness:

A. I had no authority from Twentieth Century Delivery Service in Los Angeles, to use it here.

By Mr. Mullin:

Q. Did you have authority from any other ones other than the Twentieth Century?

A. I carefully checked the names of all the companies here locally.

Q. I asked you whether you had authority from anyone. I think that can be answered yes or no.

By Mr. Cohen: I think he should let the man answer the question.

By the Court: If he would attempt to do that, but he isn't.

Just answer the question, and we will get along better.

By the Witness:

A. No.

By Mr. Mullin:

Q. Didn't you think the use of those names here in Chicago would be confusing with the identical names in California?

176 A. No.

Q. Why didn't you? Was there any reason why you didn't start a business in California under those same names rather than coming out to Chicago?

A. Was there any reason why I didn't start a business?

Q. Yes.

A. I had a yearning to come to Chicago. I wanted to get away from Los Angeles because I was a little frustrated. I was frozen out of this company, and I felt that new places to conquer gave me a stimulus to go ahead.

* * *

12. Additions to and corrections of Appellant's Appendix, pages 76-77:

201 * * * By the Court: Yes.

Let me ask the witness something: This paper marked Defendants' Exhibit 2 for identification which I have just received in evidence, signed "Ben," is that yourself?

By the Witness: Yes.

By the Court: It is addressed to "Irving Mansfield." That is the gentleman who testified here yesterday?

By the Witness: Yes.

202 By the Court: What do you mean by:

"Your letter with the samples of the 'Term and Conditions' are accepted were noted."

What does that mean?

By the Witness: Well, he sent me a note. I believe we have it in our exhibits there, something about 60 days, not responsible, or something like that, and I told him I didn't believe that that would be legal.

By the Court: He sent you a form of terms and conditions upon which pick-ups and deliveries are made, is that right?

By the Witness: Yes. That is not—

By the Court: What I want to know is, did he send you a form?

By the Witness: Yes.

By the Court: For that sort of thing?

By the Witness: That is right.

By the Court: For putting on the back of all receipts, is that it?

By the Witness: That is right.

By the Court: And you criticized it?

By the Witness: Yes.

203 By the Court: You here criticized it. You say:

"You will note that on our conditions, first paragraph, that the loss limit is set at $50.00."

—you tell him that?

By the Witness: Yes.

204 By the Court: And you say:

"unless a higher value is set or declared by the customer on the front of the ticket at the time the shipment is tendered to the driver for delivery."

You say that the terms and conditions that you provide in your receipt limits the loss to fifty dollars unless a higher value is set at the time of the delivery, to the driver. That is what you tell him, is that correct?

By the Witness: Yes.

By the Court: "In case a higher limit is set then an extra charge is made for the excess valuation."

And then you talk about the C. O. D.'s "the terms for C.O.D.'s poorly wrapped items are about the same."

You say these limitations, to make a claim, won't stand up in court. That is what you tell him, isn't it?

By the Witness: Yes.

By the Court: And then you say:

205 "Enclosed you will find samples of the terms and conditions that we accept shipments."

You say that, don't you?

By the Witness: Yes.

By the Court: And you sent him a form of yours?

By the Witness: Yes.

By the Court "The number on the AIR WAY BILL is not the registration number, but the place that I want each bill numbered beginning '01000' and up."

What you really intended to say was "00001"?

By the Witness: Yes, and that is the way they came.

By the Court: That is the way they understood you meant it?

By the Witness: Yes.

By the Court: "Have them rush proofs to you, and send them on to me."

You meant there exactly what you said, didn't you?

By the Witness: Yes.

By the Court I see. Well, what were you worried 206 about his terms and conditions on his receipts for? Why were you worrying about them?

By the Witness: He was ordering some for me.

• • •

13. Additions to and corrections of Appellant's Appendix, page 78:

215 • • • By Mr. Mullin:

Q. I believe you also testified that you never had any agreement or any understanding with the defendants as to the formation of a new company to handle the air freight forwarding business.

By Mr. Mullin: Do you have Exhibit 7, counsel?

(Document handed to Mr. Mullin by Mr. Cohen.)

By Mr. Mullin: Now will you mark this Defendants' Exhibit 9 for identification?

(Thereupon said document was marked Defendants' Exhibit 9 for identification.)

By Mr. Cohen: If your Honor please, I move that the last question of counsel be stricken, since it does not appear to be a question but rather a statement on his part.

By Mr. Mullin: I have not completed it. I am sorry. I had not completed it.

By Mr. Cohen: I am sorry, I thought you had.

216 By Mr. Mullin:

Q. (Continuing) Now, isn't it a fact that prior to May 18, 1955 or '54, during your discussions with Mr. Mansfield, you did discuss his entering into the business with you and the formation of a corporation or some entity to handle the air freight forwarding business?

A. No.

217 Q. I hand you Defendants' Exhibit 9 for identification, which purports to be a telegram.

A. Yes, I sent it.

Q. You sent that telegram?

A. Yes.

Q. And that was addressed to Irving Mansfield, City Bonded Messenger?

A. Yes.

Q. Now, I direct your attention to the sentence reading:

"CAB registration approved and issued to City Messenger Air Express, effective May 22, 1954."

A. Yes.

Q. I will direct your attention to Plaintiff's Exhibit 7.

A. Yes.

Q. That, of course, has already been introduced?

A. Yes.

Q. I note that that is addressed to City Messenger of Hollywood, Inc., doing business as City Messenger Air Express.

By Mr. Cohen: I move that all that counsel has said here should be stricken.

218 There are no questions. They are strictly statements.

By the Court: Just let him alone and maybe he will finish up.

By Mr. Cohen: I will withdraw the objection.

By Mr. Mullin:

Q. Will you tell me why there is the difference between the telegram and the letter? One states that the registration was issued to City Messenger Air Express and the letter of authorization states that it was issued to City Messenger of Hollywood, Inc.

A. When we write telegrams, we economize and we only use the words that are necessary to create a certain thought to the recipient.

Q. That is your answer?

A. Yes.

Q. And it didn't occur to you to use the name City Messenger of Hollywood, Inc. rather than City Messenger Air Express?

A. It wasn't a matter of occurring. It was just economy in writing a telegram.

• • •

14. Additions to and corrections of Appellant's Appendix, pages 79-80:

222 • • • Q. I believe you testified that you applied for your CAB license or letter of authorization the early part of 1954, around March, is that correct?

A. No.

Q. What date was it?

A. I believe in the latter part of 1953 or the early part of 1954, either of those times.

Q. The latter part of 1953 or the early part of 1954?

A. Yes.

Q. Now, at that time, what facilities did you have, did your corporation have?

By Mr. Cohen: Objection.

By the Court: What is the objection?

By Mr. Cohen: Well, he is relating to a period—if I understand the question correctly he is relating to a period prior to the authorization being issued.

223 By the Court: Well, let him answer.

By the Witness:

A. We had an office in New York. We had an office and terminal in New York and we had an office and terminal in Los Angeles.

By Mr. Mullin:

Q. Did you own any trucks or vehicles of any type?

A. Some.

Q. What trucks and vehicles did you have?

A. I don't know offhand. I would have to go and check my records.

Q. Well, would you say that you had more than 50 trucks?

A. I don't know.

Q. Well, isn't it a fact you didn't own any trucks?

A. No.

Q. Or any vehicles?

A. No.

Q. You don't remember how many you had but you do remember that you had some, is that correct?

A. That is correct.

Q. You say you had an office and terminal in Los Angeles?

224 A. Yes.

Q. Where is your terminal located?

A. 1414 Cole Place.

Q. Can you tell us what a terminal is?

By Mr. Cohen: I will object. I think he is pursuing a point that is of no value here.

By the Court: Well, he may answer.

By the Witness:

A. A terminal is a place where we receive—where freight is received and dispatched.

By Mr. Mullin:

Q. Are trucks or other vehicles maintained at the terminals?

A. No.

Q. Did you have any garage or facilities for maintaining trucks?

A. No.

Q. Where was your office and terminal in New York?

A. 203 East 36th Street.

Q. Did you have an office and terminal at 727 West 7th Street, Los Angeles, California?

A. We had a receiving office at 727 West 7th Street in Los Angeles, California.

225 Q. You said you didn't have an office but you had

a receiving office. Will you explain what the difference is?

A. Where messengers receive and pick up packages and deliver them or left them there to be transferred to another messenger or driver.

226 Q. Well, did you have an office there, then?

A. Just the receiving point. Our offices were located at 1414 Cole Place.

Q. You say that was a receiving point?

A. Yes, sir.

Q. And will you describe what a receiving point is?

A. It was a place where the messengers left their packages and picked up packages. A telephone operator was in attendance.

Q. But it was not an office; it was a receiving point?

A. Our offices were at 1414 Cole Place.

Q. Now, did you have an office at 300 South Beverly Drive, Beverly Hills, California?

A. That was also a receiving point and telephone station for our men.

Q. It was not an office?

A. No. Our offices were still in Hollywood.

Q. Did you have an office in the Rockefeller Plaza in New York?

A. No, we had no office in the Rockefeller Plaza.

Q. Did you have a lease at any of these offices other than 1414 Cole Place?

227 A. In 1954?

Q. In 1954.

A. No. We had no leases. We were on a month to month tenancy in 1954.

Q. Who did you rent from?

A. Which place are you referring to?

Q. Rockefeller Plaza, for example, in New York.

A. I think that I made the statement to you that we didn't rent an office at Rockefeller Plaza.

Q. I am sorry. You didn't have an office at Rockefeller Plaza?

A. We did have a telephone receiving station. The New York telephone company has facilities there for people like us. They have all kinds of phone booths and they have four or five telephone operators who receive messages for you and you can utilize their facilities.

228 By Mr. Mullin:

Q. Did you have a lease for your office at 1414 Cole Place?

A. Yes.

Q. Did you have any facilities, office or terminal, in Times Square?

A. We had a telephone receiving station on the same order we had at Rockefeller Plaza.

Q. Columbus Circle in New York?

A. The same in Columbus Circle.

Q. Grand Central in New York?

A. The same at Grand Central.

Q. The Battery and Wall Street in New York?

A. The same at Battery and Wall Street.

Q. Did you pay any rent or telephone bills at any of these locations we have mentioned?

A. Those facilities are given for free.

By Mr. Cohen: Your Honor, I object to this line of questioning. I have allowed counsel to continue, with the hope it might be germane to the issue. The issue here is in Chicago in regard to the City Bonded Air Express.

I am convinced this line of questioning is irrelevant 229 to the issue, and therefore I object to any further questions.

By Mr. Mullin: Some of the addresses I am reading are direct from the Complaint, and the allegations that have been made—

By the Court: Very well. Overruled.

By the Witness:

A. The facilities in those places are given for free, and we pay for all the outgoing calls. Anyone is at liberty to use them.

By Mr. Mullin:

Q. Then it is a pay station?

A. It is not a pay phone.

* * *

231 * * * Q. But you say that anyone can use it?

A. Its telephone facilities. They have telephone operators there with a series of telephones, and you pay your money at a desk, you go to the operator and tell her what number you want, give her the number, and she gets the number and give you one of the booths to use.

They also receive messages there.

232 Q. And anyone can use them, the public, or anybody?

A. Yes.

Q. Thank you.

Now, prior to March, 1954, did you have an office in Chicago? I am talking about the City Messenger of Hollywood, Inc. or City Messenger of Hollywood, Inc. doing business as City Messenger Air Express.

A. No, we had no office in Chicago.

Q. Did you have a telephone listing here?

A. I don't believe so.

Q. Did you make any pickups or deliveries here?

A. No.

Q. Did you do any of these things I have just enumerated in the Chicago area including neighboring cities in the State of Indiana?

A. Do you mean did I do any pickup or deliveries?

Q. Any pickup or deliveries or telephone listings or maintain an office.

By Mr. Cohen: Your Honor, I object. There is in the complaint I have read so far no place that goes to March, 1954 for the City Messenger Air Express and opera-
233. tions along that line.

By Mr. Mullin: Your Honor, in March, 1954, that is the date they applied for this air freight forwarding permit.

By the Court: Overruled.

By Mr. Mullin:

Q. Will you answer the question?

By the Witness: I don't remember the question.

By Mr. Mullin: Will you read it, please?

(Whereupon the question was read as above recorded.)

By the Witness:

A. No.

By Mr. Mullin:

Q. That was prior to March, 1954?

By the Court: Have you done any since?

By Mr. Mullin: Well, your Honor, they have an office now.

By the Witness: Yes, we have done it since.

By the Court: When did you open it up?

By the Witness: In Chicago we opened up an office in January, 1955.

15. Additions to and corrections of Appellant's Appendix, pages 83-84:

243 * * * Q. Did any of these 350 exclusive agents at any time guarantee your credit with air lines, Western

Union, Air Express, or any other service with whom you had business?

A. Mr. Mullin, no one guarantee my credit in Chicago.

Q. I am just asking you.

A. I am answering you. There is an innuendo that my credit in Chicago is not good, and that is not true.

Q. I am merely asking you.

A. The answer is "No."

By Mr. Mullin: That is all that is required.

* * *

245 By Mr. Mullin:

Q. Now, you testified, Mr. Fullman, that nobody ever guaranteed your credit.

I show you a letter dated August 25, 1954 marked Defendants' Exhibit 10, signed by C. H. Cuny, credit manager of United Air Lines, addressed to City Bonded Messenger & Trucking Service, and ask you if you have any reason to doubt the authenticity or veracity of that letter.

A. I never saw this letter. Neither I did authorize reply of it.

Q. Do you recall making a telephone call from Los Angeles to Irving Mansfield on August 23, 1954?

A. Very distinctly.

Q. You say very distinctly?

A. Yes.

Q. Will you repeat the conversation which took place at that time?

A. If I may have the privilege to preface it with a statement, first, and then I can come up with the telephone call.

Q. Would you mind just telling us what the telephone call was? That's all I asked you.

246 A. I really can't unless I have a chance to preface what caused the telephone call.

Q. All right. Go ahead.

A. Mr. Strynmeyer, I believe sales manager of the United Air Lines in Los Angeles, called our office and told us, "There is some difficulty with your account in Chicago where the main office of United Air Lines is. There are charges coming through there on the City Bonded Messenger and the City Messenger Air Express and they don't know which is which and, as your account is growing, we want to cut off your credit temporarily until such time as you can contact Mr. Cuny and straighten this matter out."

He said, "Will you call him?"

I says, "No; better than that, I will call my agent in Chicago and have him call on it."

So, I called Mr. Mansfield and asked him to call on Mr. Cuny at United Air Lines, explaining to him what had happened and straighten him out with what information he could, if he could do it and, if not, to phone me.

Mr. Mansfield called on Mr. Cuny and straightened the matter out. Mr. Mansfield was not authorized—

247 Q. You don't know that of your own knowledge? You are testifying—

A. Of my own knowledge I told Mr. Mansfield I did not authorize Mr. Mansfield, I told him at the time, to make any commitments for the City Messenger Air Express without notifying me first.

Mr. Mansfield called me back the next day and, in his suave way stated, "I got you all fixed up. I am personally writing a guarantee."

I says, "You didn't have to do that, we have credit."

He says, "Well, it is all straightened out. Forget about it."

Q. But your credit was cut off before you called Mr. Mansfield, is that correct?

A. Yes, for the one day.

Q. Well, Mr. Mansfield acted immediately and the next day your credit was reinstated?

A. I called him as a friend to call up there and see Mr. Kuehne and see what it was, because they had City Bonded Messenger of Chicago and City Messenger Air Express, Hollywood—City Messenger Air Express, rather, mixed up.

* * *

16. Additions to and corrections of Appellant's Appendix, pages 87-88:

258 * * * Q. You just testified that neither you nor anyone else in your organization authorized the defendants to put these telephone numbers on the books. You further testified that the books that you were referring to in the letter of May 1st was Defendants' Exhibit 11, is that correct?

259 A. I said that is the book we have been using the last couple of years.

Q. No. I am asking you, is this the book that you referred to in your letter dated May 1, 1954? You were asked that question and you said "Yes."

A. In this book (indicating)?

You asked me if we used it and I said we used it a couple of years.

Q. Your counsel, Mr. Cohen, asked you if this was the book that is referred to in this letter of May 1st. What did you answer to that?

A. May 1st?

Yes, I believe May 1, 1954.

Q. This letter right here. You read that letter? It has been introduced. It is Defendants' Exhibit 8.

A. I don't know if it is the same book. I believe it to be the same book.

Q. Well, I don't mean the exact same book, but, this is an example of one of the books?

A. Yes, that is an example. We have reprints of them from time to time.

Q. It is not this book (indicating)?

260 A. Not this book.

By the Court: "This book"? Now, which one is that?

By Mr. Mullin: Defendants' Exhibit 6. I am sorry.

261 By Mr. Mullin:

Q. Now, referring to Defendants' Exhibit 11—

By Mr. Cohen: Plaintiff's.

By Mr. Mullin:

Q. Pardon me. Yes, referring to Plaintiff's Exhibit 11, is there a Chicago number appearing on that? Do you see one there?

A. No.

Q. Is there a Chicago number appearing on Defendants' Exhibit 6, the book?

A. Yes.

Q. I direct your attention then to this note, the first sentence of the second paragraph of the letter of May 1st. Will you read that, please?

A. If I have to answer that question, picking something out of context, I would rather read the first paragraph, and then the answer will come out correct. If I answer it the way you ask me to, it is going to come out wrong.

By Mr. Mullin: I will withdraw the question.

By Mr. Mullin:

Q. Now I will ask you to read the first paragraph.

262 A. (Reading): "The enclosed copy for the 3 part snap-out forms shows slight changes from our present layout. You will note that the righthand side has a place

for authorizations by the shipper or customer where item is picked up. This is an important feature, as the signature of the sender in the appropriate place will speed payment of many questionable charges such as for instance those where a customer requests pickup at a location other than their own plant and then delivery to a third location and a third party. The upper righthand corner has a place and space allocated for an account number or identification, also an aid in customer identification, such as where customers have similar names, large firms where different departments are using you but are billed separately, out of two charges such as may occur on instruction for pickup on City Messenger Air Express, and other varied situations."

Now, this refers to a three part snap-out form,
263 and it is not—

Q. Yes, I know, I will continue. (Reading):

"You will note that the phone numbers of each city appear. If you wish an additional phone to appear on your Chicago forms you may insert if space permits."

264 Q. And so you authorized the insertion?

A. I didn't authorize anything. I was telling him about the copy here, and if he wanted to make something similar to ours he could.

Q. You didn't object to that?

A. He was using that in Chicago. They were not my forms; they were his forms.

Q. No, I had better clear that up.

If you wished an additional phone to appear—

By the Court: "If" it says?

By Mr. Mullin: It says, "If you wish."

And it says, "you may insert."

By Mr. Mullin:

Q. Doesn't that indicate other phone numbers were to appear, and also a Chicago phone number?

A. I don't know what he was going to order for himself. I didn't see his copies.

Q. Now, I believe you testified on redirect that you had your attorney make a check to see if the names of the Twentieth Century Delivery Service and Cannonball Delivery Service could be used here in the Chicago area when you came here in 1935?

A. Twentieth Century Parcel Service.

265 Q. The Twentieth Century Parcel Service?

A. Yes.

Q. Did you make any check before you opened up your office and came in here under the City Hollywood—City Messenger of Hollywood doing business as City Messenger Air Express?

A. Did I?

Q. Yes, you or your attorney.

A. Yes.

Q. What check did you make?

A. Mr. Mansfield was using the name "City Messenger Company." He had come to Los Angeles in the early part of the war and visited my establishment called "City Messenger."

That must have been prior to the time he opened up, and then he returned to Chicago.

Q. I am referring to the time in January, 1955 when you opened your office here.

A. Yes, Mr. Mansfield was operating the City Messenger. I knew that. It was City Bonded Messenger.

Q. You knew that?

A. Yes, I did.

* * *

18. Additions to and corrections of Appellant's Appendix, page 90.

TESTIMONY OF SIDNEY B. FULLMAN

277 * * * Q. How long have you been associated with the City Messenger of Hollywood?

A. Since 1947, which was the predecessor company, Fullman & Chess, and the corporation since '51, its inception.

By Mr. Mullin: I object to that answer. There has been no chain of title established yet between Fullman & Chess and this plaintiff.

By the Court: Well, it may stand.

If you are going to rely upon that I wish you would connect that chain of title up by some sort of paper.

280 By Mr. Cohen: If your Honor please, I will now introduce into evidence Plaintiff's Exhibit 13.

By Mr. Mullin: Well, I will object to the introduction of this. I don't see any purpose in introducing it. It does not establish any use or chain of title, and in fact all it is is a duplicate affidavit. Where is the original of the affidavit?

I don't know what it proves.

By Mr. Cohen: If your Honor please, this definitely establishes that Sidney Fullman and Samuel Chess published the fact they were operating a business under the fictitious name, the name being City Messenger of Hollywood. That is all this document purports to be.

By Mr. Mullin: It does not purport to prove how they were operating the business.

By the Court: What is the objection?

By Mr. Mullin: The objection is to the introduction of a document which does not prove any use and is not

281 yet established in the chain of title. Even if there were a use there has been no chain of title established.

but the plaintiff or whoever this purports to be—that simply is not shown.

By the Court: Well, I think that is true. I think also that is not—

By Mr. Cohen: This is a notarized document, if your Honor please.

By the Court: It is not the original paper or is not a properly certified copy.

By Mr. Cohen: It is by a notary public. It is signed.

By the Court: Listen, sir, just read it. What is it?

By Mr. Cohen: This is a duplicate affidavit. The original affidavit was filed with the County Clerk on September 30, 1947.

By the Court: Yes.

By Mr. Cohen: And this document carries the signature of Dorothy Redfern, and it is subscribed and sworn to.

By the Court: Now, objection is made to it, and
282 somehow or other I feel I have got to follow the rules of evidence. If copies of that instrument were admissible it would be a copy certified to by the County Clerk.

Objection sustained.

* * *

19. Additions to and corrections of Appellant's Appendix, page 93:

292 * * * By Mr. Cohen: If your Honor please, I will introduce Plaintiff's Exhibit 15 into evidence.

By the Court: Any objection?

By Mr. Mullin: Except for my standing objection about the chain of title—

* * *

20. Additions to and corrections of Appellant's Appendix, page 94:

302 Q. That period of time during your operation did you use any marks, symbols or other media for the advertising of your company?

A. Yes. We used the word in script "City" with a boy, a cartoon character running through the scene, which we used continuously during that time.

By Mr. Cohen: If your Honor please, I will offer Plaintiff's Exhibit 3 in evidence, this being the best possible evidence of this transaction.

By Mr. Mullin: I object, your Honor, on the ground this is an original typewritten document, not an original but what purports to be a copy. It is not even a carbon copy. It is not complete.

I see there are light and dark portions in here. He has not laid the proper groundwork, and I submit if this was a true sale there would have been a carbon copy and he would have had it. He testified the other day he had a personal file in which he kept all these papers, in-
303 cluding newspaper clippings and so forth, and yet he does not have at least a carbon copy.

By the Court: I don't think this paper is admissible. This is the one I have seen before, isn't it?

By Mr. Cohen: It is the one you have seen before, yes.

By the Court: Sustained.

* * *

305 * * * Q. Do you know how soon after the co-partnership transferred that symbol to the corporation the corporation started using such symbol?

* * *

A. Immediately.

By Mr. Mullin: Your Honor, I don't now if you want me to continue to object to the introduction of any of this evidence which predates the actual incorporation of the City Messenger of Hollywood.

By the Court: I want you to try your case. What-
306 ever is necessary for maintaining the rights of your clients, I want you to do.

By Mr. Mullin: That is a continuing objection.

By the Court: I don't know by what means, and counsel has not brought out by what means such rights, if there were any, were transferred to the present plaintiff.

By Mr. Silverman: Your Honor, may I say something?

By the Court: Yes.

By Mr. Silverman: The continuous testimony of this witness has been "We transferred this," or "We transferred that", or "We established that."

By the Court: I understand that.

By Mr. Silverman: It is difficult for us to continuously object, and we presumed a continuous chain of title was to be established here, and it has not been, and consequently we are forced to object until the continuous transfer of the rights has been proven, and it has not.
307 By the Court: I agree with you. You have not shown such change. We don't know. "It just happened" is what this gentleman said, "It just happened."

He has not shown us any papers, agreements, nothing.

By Mr. Cohen: I will ask.

By Mr. Cohen:

Q. Mr. Fullman, on or about what day and what year did the plaintiff corporation start using that particular symbol appearing—

By the Court: Now, you are just assuming it or you are just assuming if they started using it they did own it properly, and therefore ought to have all the rights accrued that anybody else had who had ever used it. That is just not so, and it does not get you anywhere to assume it; it just wastes a lot of time.

By Mr. Cohen: If your Honor please, this is a matter of personal property and, if the Court please, you will also note it involves people who are related, father and son. I have attempted in the best possible way in the
308 limited amount of time I have had to prepare this case—

By the Court: Now, don't talk to me about limited time. Your case was started a year and a half ago. I have explained that to you.

I don't know how this got there. If the corporation issued stock there should be corporate records to show that.

309 By the Witness: There are corporate records, your Honor. The journals of the corporation we have. Would they be acceptable?

By the Court: Corporate records.

By the Witness: We can produce those, your Honor.

By the Court: If this matter had been considered of any value there would have been some papers made up about it, I would think.

By Mr. Cohen: If your Honor please, I will attempt to introduce—I have attempted to introduce Exhibit 3.

By the Court: Exhibit 3 is just a paper an agreeable young lady made up one morning to please this gentleman.

By Mr. Cohen: I believe he also testified he saw the original and that the original was executed.

By the Court: I have not seen the original.

By Mr. Cohen: He also testified he does not know where it is, and it is lost.

310 By the Court: It doesn't make Exhibit 3 admissible.

By Mr. Cohen: Further, your Honor please, there was testimony that in 1946 Mr. Ben Fullman employed an advertising agency to develop a trade mark and symbol for

him, and this mark and symbol we are talking about now, the boy running through the letter "C" represents that mark developed at that time.

By the Court: Now, I heard all that. You just get a little something here and then you assume somebody else owns it. I don't know whether you could make a chain of title or not. I don't know whether it makes any difference to you whether you do make a chain of title, or whether it makes any difference to the case or not whether you make a chain of title, but you have not made a chain.

By Mr. Cohen: If your Honor please, at the moment I have not made a chain; I agree with your Honor.

311 If my understanding of the Hanover Star Milling case is correct the ownership of the mark or symbol is not the primary problem when it comes to a matter of use. The question of use and right to use the name and symbol goes to the question of who is first using the symbol in the particular community or area in which the parties are in controversy, so that in essence, if your Honor please, I think the question of the ownership of a name and ownership of a particular symbol is not a question at this particular moment.

By the Court: If it is not then why spend all the time on it?

By Mr. Cohen: If your Honor please, my theory was I would like to establish when the symbol was first established by my client and when the use of the symbol was made and how it came into the Chicago area.

By the Court: It wouldn't do any good unless you show continuous ownership.

21. Additions to and corrections of Appellant's Appendix, page 96:

320 * * * Q. Is this the carbon copy of the letter that was sent?

By the Court: Let me see it.

Is it?

By the Witness: I thought you said, "Let me see it," your Honor. I didn't understand you.

By the Court: He asked you a question: Is that a carbon copy of the letter?

By the Witness: I am looking at it, your Honor.

By the Witness:

A. This is a carbon copy of the letter. However, it bears the signature of my father.

By the Court: What?

By the Witness: This is a carbon copy of the letter
321 I typed. However, it bears the signature of my father, Ben Fullman. I typed this letter, though. I asked him to sign it.

I recall now I asked him to sign it because I didn't know Mr. Mansfield that well.

Is that properly responsive to the question, your Honor?

By the Court: Well, I don't know.

By Mr. Cohen: I will offer Plaintiff's Exhibit 16.

By Mr. Mullin: Your Honor, I will object to that.

By the Court: Let me see it.

By Mr. Mullin: If the Court please, may I direct your attention to the initials "B. F." which appear on the second sheet?

By the Court: Yes.

By Mr. Mullin: He testified that he typed it or something, and somebody else signed it. That would seem to indicate that somebody else, other than Ben Fullman, dictated it.

By the Witness: What do you mean by "seem to indicate"? If you are accusing me of something I want
322 to know what you are accusing me of.

By the Court: What do you contend this tends to prove?

By Mr. Cohen: It only tends to prove that we sent a letter into the Chicago community to Mr. Mansfield on our letterhead. Our letterhead bore the symbol or mark of our company with the word "City" on it with the boy running through the "C", the messenger boy running through the "C".

By the Court: Well, you address him as "City Messenger Service."

By Mr. Cohen: What was that?

By the Court: You address him, "Mr. Irving Mansfield, City Messenger Service, Chicago, Illinois."

By Mr. Cohen: That is right. There is no contention that we didn't.

By the Court: What are you complaining about? Just go ahead.

By Mr. Cohen: We are complaining, if your Honor please, that the defendant corporation is making par-
323 ticular efforts to prevent us from operating our business, City Messenger Air Express, in the Chicago community, preventing us from using the telephone under the name of City Messenger Air Express.

By the Court: Here you indicate it—that is the way you address it.

By Mr. Cohen: That is correct.

By the Court: Way back there in 1951.

By Mr. Cohen: May this letter be received?

By the Court: Any objection?

By Mr. Mullin: Yes. Mr. Sidney Fullman's initials are not "B" in any event, and the testimony he has given does not purport to—

By the Witness: I think you are narrow, counsel. My middle initial is "B".

By Mr. Silverman: Listen to the Judge, please.

324 By Mr. Mullin: He stated, he testified he typed it and he has got an initial B. I don't see what

materiality it has. We will admit there has been correspondence, they sent their correspondence and their letterheads in. I cannot see what bearing that has on the matter. I don't think it should go in. We have the record cluttered up with enough stuff already.

By the Court: I don't see how it helps you.

By Mr. Cohen: I wasn't proposing to introduce it until the Court asked—

By the Court: I wanted to see how you addressed him. That is what I wanted to see.

* * *

22. Additions to and corrections of Appellant's Appendix, page 97:

331 * * * Q. Does City Messenger Air Express—or, I should say, does City Messenger of Hollywood, doing business as City Messenger Air Express, conduct a local delivery and pickup service in any community?

* * *

By the Witness:

A. No.

By Mr. Cohen:

Q. Specifically, does the plaintiff corporation in its air freight forwarding business, do any pickup and delivery in the Chicago community?

332 A. Does City Express—what did he say?

(Whereupon the question was read as above recorded.)

By the Witness:

A. Incidental to a forwarding movement, it will perform pickup and delivery, but it must be in connection with a forwarding movement.

* * *

23. Additions to and corrections of Appellant's Appendix, page 106:

TESTIMONY OF ELIAS MANSFIELD

369 * * * By Mr. Mullin:

Q. Mr. Mansfield, I hand you a five page photostatic copy which purports to be a debtor's petition in
370 the District Court of the United States for the Southern District of California. In the matter of the Modern Delivery Service, a California corporation, doing business as City Messenger & Express Company, City Messenger, filed July 15, 1948, No. 46212-M, and ask you if you recognize that.

A. Yes, I do. These were delivered to me by—rather, I picked these up at the office of the Clerk of the District Court of the United States at Los Angeles, California, Bankruptcy Division, and they prepared these photostats at my request.

By Mr. Mullin: I will offer into evidence Defendants' Exhibit 11.

By the Court: Is there any objection?

By Mr. Cohen: No objection.

By the Court: It may be received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 11.)

By the Court: Go ahead.

By Mr. Mullin:

Q. Now, did you check the bankruptcy records at the time that you obtained this photostatic copy of the
371 debtor's petition?

A. Yes, I did.

Q. Do you recall if the debtor here was ever discharged in bankruptcy?

A. Yes, they were.

Q. Do you recall the date they were discharged in bankruptcy?

A. I know it was in 1952. The exact date escapes me. I believe it was January or February of 1952. I am not sure of the day of the month, but I know it was in 1952.

By Mr. Mullin: Your Honor, yesterday I entered into an oral stipulation with the attorney for the plaintiff that the date on which this corporation, this debtor, was discharged was January 9, 1952.

Is that correct, Counsel?

By Mr. Cohen: I don't think we had a stipulation.

By Mr. Mullin: You certainly did.

By Mr. Cohen: I don't recall that I firmly stipulated with counsel here the date he specified to the Court
372 as to the date of discharge, but I personally have no knowledge, nor do my records disclose to me the date of discharge. However, I don't think—the bankruptcy and the date of discharge, I don't believe, are pertinent.

373 By Mr. Mullin: Your Honor, to refresh the recollection of counsel for the plaintiff, I believe I showed him the Dun & Bradstreet report and pointed out the date appearing thereon. On January 9, 1952, the case was closed, the creditors receiving nothing on their claims.

Does that refresh your recollection, counsel?

By Mr. Cohen: I represented to the Court that we discussed this, but I do not recall giving counsel here a firm stipulation that I would agree to that particular date. I don't want to embarrass counsel, yet I honestly can't say that I did firmly stipulate to that date.

However, if your Honor please, neither Modern Delivery Service nor—Modern Delivery Service is not a plaintiff or defendant here.

By the Court: At the moment you say you did not firmly stipulate?

What do you say about it, counsel?

By Mr. Cohen: To the best of my recollection
374 I said I don't know about the date of discharge. Probably that was the date.

By Mr. Mullin: This morning, do you remember a conversation with me where you said, "Why do we have to enter into a written stipulation? We can orally stipulate."?

By Mr. Cohen: I believe I said that but I believe, also, at the same time, you heard one of the officers of the plaintiff corporation raise an objection to my stipulation.

By Mr. Mullin: I didn't stipulate with them. My conversation was not with the officers; it was with you.

By the Court: Well, what is it? Well, is there a stipulation?

By Mr. Cohen: I honestly believe that I have not stipulated.

By the Court: Well, are you stipulating now, in view of what has transpired in the meantime?

By Mr. Cohen: Well, let the stipulation state that based on a report, it would appear that January 9, 375 1952 was the date of discharge of Modern Delivery Service, Inc.

By Mr. Mullin: That is what I had in the written stipulation. Thank you.

That's all.

Cross Examination by Mr. Cohen.

Q. Counsel, this meeting of August 2, 1954, this luncheon meeting, where you and Ben Fullman and his attorney were present, that was a meeting to discuss the possibilities of the parties getting together, is that correct?

A. That is correct.

Q. And—

A. Pardon me, counsel. May I add that it was not so much about getting together as to find some way to get together?

Q. So far as you know, there was no agreement to get together at that point, no agreement existing?

A. No. That would be August.

Q. No agreement that they get together?

A. No, not at the August meeting; no, sir.

Q. Did Mr. Ben Fullman at this meeting occurring sometime in September, 1954, ever say to you that
376 he would have to confer with the other officers of the City Messenger of Hollywood corporation?

A. No, he did not.

Q. Counsel, you are familiar with corporations and how they deal, how they work?

A. Yes, sir.

* * *

24. Additions to and corrections of Appellant's Appendix, pages 110-113, inclusive:

TESTIMONY OF WILLIAM C. SCHELLI

403 By Mr. Mullin:

Q. You say that you did not operate during the war years?

A. That's right. I said that.

By the Court: He started in 1937. Is that it?

By the Witness: That is right, your Honor.

By the Court: What equipment did you have then?

By the Witness: Well, we had four trailers and three tractors and one straight truck.

By Mr. Mullin:

Q. By trailers do you mean these big hauling trailers?

A. Tractor and trailer, that's right. Four trailers, three tractors, and one straight truck.

Q. One straight truck. Did you have any small equipment for special pickup and messenger service?

A. In our business, whether it was special or whether we put it all together on a small truck, and he made
404 the specials.

Q. Now, when somebody called you for messenger service to pick up an envelope and deliver it to somebody in the other part of the city, did you send out a tractor and trailer to pick it up?

A. I never used the word "messenger." We made special delivery, but never as small as an envelope.

Q. Were you ever in the messenger service?

A. I never did an envelope trade or business.

Q. I asked you, were you ever in the messenger service?

A. No.

Q. You were not. Have you ever been engaged in the messenger business?

A. No, sir.

Q. Well, since you have never been engaged in the messenger business, have you ever been in competition with City Bonded Messenger & Trucking Service?

By Mr. Cohen: Objection.

By the Court: He may answer.

By the Witness:

A. When you say "messenger and trucking" I 405 don't know what part you are stipulating or specifying. As far as trucking—

By Mr. Mullin:

Q. I am speaking of the name of the defendant in this lawsuit.

A. When you say "trucking" I could very well easily be a competitor.

Q. Do you know whether or not you were in competition with them?

A. Well, I could.

Q. Answer that yes or no.

A. I can't say. I don't know how broad your statement is.

Q. I am asking you whether or not you were ever in competition with the defendant here. You either know or you don't know. It is either yes or no.

A. I couldn't say for sure. I could have been. I can't say for sure.

Q. Well, then, of your own knowledge you don't know?

A. I cannot tell you for sure.

Q. For how long a period during the war was the City Transit Lines out of business?

A. Well, we were not actually out of business.
406 We closed down for the war effort.

By the Court: When did you close down; tell us that?

By the Witness: Well, I closed down because of the fact I was more—

By the Court: No. Not why; when?

By the Witness: When?

By the Court: Yes.

By the Witness: Ten days after Pearl Harbor.

By the Court: Ten days after Pearl Harbor?

By the Witness: That is right, sir.

By the Court: When was that?

By the Witness: December 7, 1941.

By Mr. Mullin:

Q. And until when?

A. Until ten days after the close of the war.

By the Court: When was that?

By the Witness: Oh, 19— the actual date I don't know.

By the Court: What year?

By the Witness: 1945.

By the Court: What did you do with your trucks?
407 By the Witness: I sold them.

By the Court: What did you do with your trailers?

By the Witness: They were all sold to another company.

By the Court: How old were you then?

By the Witness: Well, in '41 I was 31 years old.

By Mr. Mullin:

Q. Did you have any accounts receivable?

A. Accounts receivable, yes, we did.

Q. What did you do with those?

A. We collected them, and everything was paid off.

Q. And then you sold everything to another company?

A. Sold pieces here and pieces there.

Q. Not all to the same company?

A. No.

By Mr. Mullin: I think he was out of business. * * *.

409 Q. Was there anybody else engaged with you in this business?

A. No, sir, it is an individual company.

Q. Individual?

A. That's right.

Q. Now, this feeder service, will you describe what that is?

A. Well, the feeder service is a service that is rendered to either rail, truck or air lines on a through rate basis. Of course, when the air-line—when we were not being operated there we would charge our local delivery from Gary, Hammond or East Chicago to the air port, but on the motor carrier we are operated on all through rates throughout the United States, and even though they have their I.C.C. authority they do not use it, and we pick up from them, or vice versa pick it up and deliver to them.

Q. Then you are actually a part of the service the railroad renders to its customers, is that what it is?

410 A. That is what it amounts to.

By Mr. Mullin: Then I move to strike the testimony.

By the Court: Well, overruled.

By Mr. Cohen: The allegation made by the defendant here is that he had something very, very valuable in the name of "City Bonded."

By the Court: Are you addressing yourself to the motion? I have ruled.

By Mr. Cohen: I am sorry. • • •

By Mr. Mullin:

Q. Do you know the plaintiff in this case and the officers of the plaintiff, City Messenger of Hollywood, Inc. doing business as City Messenger Air Express?

A. I have met them.

Q. How long have you known them?

A. Not too long.

By the Court: Well, you know, that word "too" used in that sense, I don't know what that means. We better find out more about it. How long have you known them?

By the Witness: Just recently.

416 By the Court: Well, how recently?

By the Witness: Very recently.

By the Court: Well, how recently?

By the Witness: Just the other day.

By the Court: Last week or this week?

By the Witness: This week, sir.

By Mr. Mullin:

Q. Will you tell us how you met the Fullmans this week?

A. Well, I was called and asked—he called and he talked to me and asked me how long I was in business and if I had any interference with our name, City Transit, with any other comapny.

I told him, so far as I was concerned we didn't have too much interference because of the amount of advertisement and amount of people that I know throughout the city in the transportation business that it wouldn't interfere as much.

Q. Well, what do you mean by "the amount of advertising"?

A. Well, I belonged to these clubs so long that my name is practically around the city and I know all the truckers and everybody else, so, naturally, when the name comes up, they refer to me.

417 Q. They know you personally, is that it?

A. That is right.

Q. Your name?

A. That is right, sir.

By the Court: What is your name, sir?

By the Witness: William C. Schelli.

By the Court: Schelli?

By the Witness: Yes.

By Mr. Mullin:

Q. And they know you, then, by the name of William C. Schelli?

A. That is right, sir.

Q. Have you ever notified City Bonded Messenger & Trucking Service that you were using the name City—was that Transit Line—prior to them and ask them to stop?

A. I can't see where the connection of the two names would have any bearing whatsoever. Mine is City Transit Line.

Q. And, of course, your businesses are considerably different too? That was a question.

A. My business is different. The messenger part is different but, when you say, "trucking," we are in trucking and it could be duplicated.

418 Q. That is general trucking, is that what you are talking about?

A. Trucking. We do any type of trucking.

419 Q. Do you have any financial arrangement with the plaintiff in this case?

A. None whatsoever.

Q. Have you ever done any business with them?

A. No, because we have done business with the regular air lines. We don't do hardly any business at all with freight forwarders at the present.

Q. Do you do business with messenger service?

A. Well, we wouldn't have any use for messenger service.

Q. Well, if somebody called you for a messenger service or do they ever call you for messenger service?

A. Oh, I think a few times I received calls and told them to call somebody that specialized, actually, in the package, envelope business and messenger service.

* * *

25. Additions to and corrections of Appellant's Appendix, pages 113-116, inclusive:

TESTIMONY OF SIDNEY B. FULLMAN

420 * * * *Cross Examination by Mr. Mullin.*

Q. On your direct examination, Mr. Fullman, in connection with Plaintiff's Exhibit 14 which comprises this advertisement which appeared in the Los Angeles Herald Express, I believe you said that it had something to do with a ticket service, a ticket delivery.

Can you describe what that service was, or what that ticket delivery was?

A. Well, if you refer specifically to the record, I will be glad to answer you. I don't know if I said that.

Q. Will you tell us what this ticket delivery is that you have here?

A. You mean here (indicating)?

Point it out to me, what you want me to answer. You haven't got anything pointed out to me there. There is nothing sitting on that page.

Q. I am just asking you what your ticket delivery service was.

421 A. Well, that is different. I can answer you.

Q. That is no different than what I asked you in the first place.

A. Our ticket service was a pickup and delivery of theater tickets, sporting events tickets, spectator tickets, various types of entertainment tickets, picking them up and purchasing them for theater goers at the box office and delivering them to their residences and getting paid a fee for performing that service.

This was a messenger service and we found it somewhat acceptable to the business.

Q. Then you went to the theaters or the arenas or the stadiums and purchased the tickets for the customers, is that correct?

A. Only when they requested it. They requested we pick up tickets at a specific theater and we would pick them up for them at the theater, pick them up at the theater and deliver them to them. We would advance the money and then collect it back.

Q. Where were these theaters located?

A. In Los Angeles, California.

422 Q. Well, were they in the downtown district or in the outlying neighborhoods? Where were they located?

A. In Los Angeles, California. Anywhere in Los Angeles, California.

Q. Were any of them in the downtown district?

A. Yes.

Q. Now, you testified that on April 29, 1947 you purchased a customer list from Modern Delivery Service and the right to use the name City Messenger and its identification and mark in the Hollywood area?

A. That is right.

Q. And in such areas where it would not compete with Modern Delivery Service's downtown operations?

A. That is correct.

Q. You don't consider this competing with Modern Delivery Service in the downtown operation?

A. No, I don't.

Q. Well, now, isn't it a fact that this ad was the Modern Delivery Service ad?

A. Is it a fact?

Q. Yes.

A. Thank you for answering.

423 Q. I am asking you.

A. Oh, that is different. No, it is not a fact.

Q. Will you define, then, what Modern Delivery Service's downtown operations would mean geographically?

A. At what particular time?

Q. On June 9, 1947.

A. I couldn't specifically answer that.

Q. I beg your pardon?

A. I couldn't specifically answer that.

Q. Well, I am referring to the time after you purchased this customer list, et cetera.

A. I wasn't connected with that firm at that time.

Q. I beg your pardon?

A. I wasn't connected with Modern Delivery Service at that time. I already stated that.

Q. Yes, but you bought a list from them and you had been connected with them before that.

A. Well, if you want to talk about before that, I will be glad to talk about it.

Q. Mr. Fullman, you are a native of Los Angeles, California, are you?

A. I was born there.

424 Q. You were born there?

A. Yes.

Q. And you have resided there for some time?

A. Yes.

Q. You are familiar with the City of Los Angeles and the environs?

A. Well, the 441 square miles of Los Angeles is pretty difficult to get completely familiar with. I think it is the largest city area in the United States.

Q. Well, reasonably familiar?

A. Well, as well as any citizen can become familiar.

Q. Well, do you know whether Hollywood is a municipality?

A. Well, now, will you define what you mean by "municipality"? Do you mean, is it incorporated or not incorporated; is it unincorporated or is it a suburb?

Q. Is it a city?

A. It was incorporated into the City of Los Angeles in 1909.

Q. Is it part of the City of Los Angeles?

A. The City of Los Angeles surrounds it.

425 Q. Well, now, is it—you say it surrounds it?

A. Yes.

Q. Well, is it part of the City of Los Angeles?

A. It is incorporated within the city limits.

Q. Is it part of the City of Los Angeles?

A. It is within the city limits.

Q. Can you define the boundaries of Hollywood?

A. I would have to have a surveyor's map for that.

Q. Well, just generally, as close as you can.

A. I already stated it is within the city limits.

Q. I know you did, but I am asking you whether you can define approximately the boundaries of Hollywood.

A. Well, being a member of the Hollywood Chamber of Commerce, I would say that Hollywood encompasses any particular territory where Hollywood's influence is felt, but specifically, I could set out the approximate definition of what I, as a citizen of Hollywood, would consider Hollywood.

Q. But there are no definite boundaries to Hollywood?

A. Well, I think—

426 Q. It is what each one thinks it is?

A. I think in the tract information in the City of Los Angeles it is definitely defined.

Q. Well, now, you think. Have you seen it?

A. Yes, I have seen it defined.

Q. You have seen it defined?

A. Yes.

Q. Where have you seen it defined?

A. In the Hall of Records, City of Los Angeles.

427 Q. Where you saw it defined, did that include downtown Los Angeles?

A. No, it didn't, not what is now downtown Los Angeles. Downtown Los Angeles has been increased in area.

Q. Was it downtown in Los Angeles on June 9, 1947?

A. Was what downtown, Los Angeles, on June 9, 1947?

Q. Was this Hollywood a part of Los Angeles downtown on June 9, 1947?

A. No, it wasn't.

Q. Now, you testified that you paid $2,547 for this customer list, name, et cetera; you said you paid that in installments?

A. That is correct.

Q. Who did you pay that to?

A. Modern Delivery Service, Incorporated.

Q. Who was the head of Modern Delivery Service, Incorporated at that time?

A. You mean—which specific office are you referring to?

Q. Who was president?

A. Benjamin Fullman.

Q. How was this paid?

428 A. By check.

Q. It wasn't paid in cash as Ben Fullman testified previously?

A. Well, if you are going to split hairs on what is cash and what is check, why, we can do that. Give me a book and I can read, too.

Q. Will you answer the question?

A. Well, I am not going to be asked to define what is cash and what is check. I paid by check. Is that good enough?

Q. Do you have any of those canceled checks?

A. No, I don't.

Q. Do you not have them available?

A. No.

Q. You stated you had a personal file.

A. That is correct.

Q. But you never retained any?

A. These are partnership checks.

Q. Partnership checks?

A. Yes.

Q. Well, in that personal file you retained a partnership tax return, didn't you?

A. Yes, I did.

Q. Well, didn't you retain these checks, then?

429 A. They were in the partnership file. I think I already stated that.

Q. Were there any vouchers or any record of these payments by check?

A. Well, is this a question?

Q. Well, I think it is.

A. You mean—well, what do you mean by "was there"? What do you mean by "Was there a voucher?" What do you mean by "Was there a voucher?" Do you mean, was one created, was one written? What do you mean?

Q. Are there any records, any documents of this transaction of these payments?

A. Yes, there is.

Q. What are these records or documents?

A. The books of the Fullman and Chess.

Q. Other than the books of Fullman and Chess, are there any other records?

A. There are vouchers.

Q. Are those available to you?

A. I wouldn't know at this particular time. I don't have them with me.

Q. Where are they?

A. I really don't know.

430 Q. Well, now, you were preparing for a trial here, and you knew what was going to take place here.

Didn't you make any effort to make those records available?

A. No one specifically requested them.

Q. Now, this complaint that was filed by City Messenger of Hollywood, Inc., I believe you signed the complaint, is that correct?

A. That is correct.

Q. Now, directing your attention to the allegation numbered 13-C on page 7 of the complaint and disregarding any penciled notes that I may have on there, would you read that, please, to yourself, or aloud, if you like, and tell me if the allegations contained therein—well, you read that first.

A. Well, this is part of C, an allegation—

Q. Yes, 13 in C.

A. Let me read the entire thing, will you, so I can familiarize myself with what you are—

Q. Surely. 13-C is actually—

A. Do you mind if I read this, Mr. Mullin? You said I could.

431 * * * Q. Now, I show you Plaintiff's Exhibit 17 and ask you if the allegations contained therein are based on that Plaintiff's Exhibit 17, identified also as Plaintiff's Exhibit B in that allegation?

A. This is one of the instruments on which the allegation is based.

Q. Is it based on any other instrument?

A. Yes.

Q. What instruments are they?

A. Advertisements, advertisements being advertised in the classified directory published by The Reuben Donnelley Corporation for the Illinois Bell Telephone
432 Company.

Q. Any others?

A. Books being distributed for the City Bonded Messenger & Trucking Service to their customers.

Q. What kind of books?

A. Messenger receipt books.

Q. When were they distributed?

A. Subsequent to January 10, 1955.

Q. Do those receipt books and the Reuben H. Donnelley advertisement bear any advertisement stating that it is a national messenger service in the U. S. A.?

A. Well, that particular one at that particular time, if I could see one—

Q. Well, you are telling me there are books. I am asking you about it now.

A. Yes, there were at that particular time.

Q. On those books?

A. Yes, on the messenger receipt books, there was.

Q. What did it say?

A. Oh, in the exhibit I think it shows exactly what was said, but I took that information from the exhibits that were presented to me at the time.

433 Q. This information that you have here (indicating)?

A. Yes.

Q. Didn't you, in fact, take it from this (indicating), which is mentioned as Exhibit B here?

A. Well, this is one of the instruments, yes. It is right on here, City Messenger National Credit Card.

Q. That is right. You took it from there?

A. That is one of the instruments I took it from. You specifically mentioned City Messenger credit cards, now. Didn't you mention City Messenger credit cards?

Q. No, I didn't.

A. Well, that is what that refers to in that instrument.

Q. In what instrument?

A. You just pointed it out to me, City Messenger National Credit Card. That is what you pointed out to me.

Q. I asked you about—

A. (Addressing the Reporter): Why don't you find that? Can you read back the question, Miss Clerk, the one just before I answered him. He was trying to
434 refresh my memory. He mentioned City Messenger Credit card.

This is specifically mentioned in the allegation. Anyway, this is one of the instruments on which the allegation was based. They advertised City Messenger National Credit Card as most convenient for charging messenger service at City Messenger offices, whether New York, Hollywood, Beverly Hills or Los Angeles. That

is what it refers to. That is specifically in this allegation.

435 Q. This is what these allegations are based on? I am pointing to Plaintiff's Exhibit 17.

A. You are trying to put words in my mouth, that my whole allegation is based on that. It isn't.

Q. Were there any other documents that are not already in evidence upon which these allegations are based?

A. I believe there are other documents.

Q. Will you name those documents?

A. Well, if I could look through my file, I could find them right now. I have them in my file.

Q. You don't know, offhand?

A. Offhand, I couldn't say.

Q. Do you want to look through your files?

A. Sure.

(Whereupon the witness left the stand and upon his return the following proceedings were had and taken herein:)

By Mr. Mullin:

Q. Did you find any, Mr. Fullman?

A. I did not see any records.

Q. Thank you.

By Mr. Cohen: I am sorry, but I didn't hear the
436 answer.

By the Witness: I did not see any in that thing that I just looked through, in the file. * * *

439 * * * Q. At the time that Modern Delivery Service was bankrupt, did they owe you any money?

A. Yes, they did.

Q. How much?

A. Oh, I can't recall the exact sum. It was in
440 the thousands.

Q. How long had they owed you that?

A. Approximately six months.

Q. Six months, and for what did they owe you that money?

A. Well, specifically for personal loans that I made to the Modern Delivery Service to support their business.

441 By Mr. Mullin:

Q. Well, then, was that before or after you left them that you made those loans?

A. These were made after I left them.

Q. After you left them—

A. Yes.

Q. you made loans to them?

A. Yes.

Q. Did you attempt to make any offset against those loans of this $2,547 that you paid them?

A. Never got the opportunity.

Q. Now these rate chart folders I just showed you, Plaintiff's Exhibit 17, where did you say you received them, or first saw them?

A. I picked that up in the home of Rose Siegal in Chicago up on Margate Terrace. I was staying with her at that time, and she worked for Mr. Mansfield.

Q. Was that the only time you had seen it?

A. I saw another copy of it in my telephone answering service. She got a copy, she received it in the mail and she showed it to me.

Q. Do you know what date she received it?

A. No, I can't fix that date. I saw it, and she
442 had showed it to me.

By Mr. Mullin: I see.

Will the reporter mark this Defendants' Exhibit 12?

(Thereupon said document was marked Defendants' Exhibit 12 for identification.)

By Mr. Mullin:

Q. I will show you Defendants' Exhibit 12 for identification and ask you if you have ever seen those.

A. Not these particular colored ones.

Q. Well, did you see one in any other color that had the same information on it?

A. You just showed me an identical one—well, not an identical one, but a similar one substantially different from these. I don't recall these at all, these particular colored ones. I have never seen a red one or green one.

Q. Do you know whether there appears on there any of the information you complained of in your complaint? I am referring to the allegation in 13-C.

A. Yes, there is.

Q. What is it?

A. The mark on here.

443 Q. Outside of that?

A. Another particular "A better standard of messenger service."

Q. Are you complaining of that?

A. Yes.

Q. Well, that is not in your complaint. I asked you if it was in your complaint.

A. They—well, that was borrowed from a particular advertisement that we placed in New York.

Q. Will you listen to the question?

I am asking you if any of the allegations contained in 13-C of your complaint are contained in those folders.

A. I obtained it from that particular information, from that particular folder.

Q. Would you answer my question?

A. I told you I don't recall ever seeing these particular folders.

Q. Will you answer whether or not there was any allegation contained in there?

A. Let me see the allegations and I will be glad to tell you.

(Whereupon Mr. Mullin handed a document to the 444 witness.)

By the Witness:

13?

By Mr. Mullin:

Q. 13-C.

A. You say besides the mark?

Q. Just the allegations contained in 13-C.?

A. Other than the mark I can't see any.

Thank you very much, counsel.

* * *

26. Additions to and corrections of Appellant's Appendix, pages 116-119 incl.:

446 * * * By Mr. Mullin:

Q. Mr. Fullman, in 1951 did you maintain an office or any pickup and delivery service of any kind whatsoever in Chicago?

A. We did not maintain an office here.

Q. Did you maintain any pickup or delivery service?

447 By Mr. Cohen: Objection.

By the Court: He may answer.

By Mr. Cohen: I don't think that was any part of—

By Mr. Mullin: Will you answer?

By the Court: Overruled.

By the Witness:

A. Did we maintain any pickup and delivery, or did we perform any pickup and delivery?

By Mr. Mullin:

Q. Do you understand the question, Mr. Fullman?

A. No, I don't.

Q. Then answer the question as you understand it.

A. As I understand the question it is, did we perform any pickup or delivery service. We performed a special service in the Chicago area in connection with our Los Angeles operation.

Q. What facilities did you have in Chicago for performing the pickup and delivery service?

A. Well, pickup and delivery was ordered by a client inviting us to perform the segmental services in the area. For instance, if they were shipping something
448 to Los Angeles and they wanted us to pick up something, and deliver it in Los Angeles, they would call us by long distance phone, which was usually in connection with a convention or a traveling account executive.

Q. Where was that pickup and delivery performed?

A. The pickup and delivery was performed, was normally performed at a railroad station or air line depot.

Q. In what city?

A. Los Angeles.

Q. Did you perform any pickup and delivery service in Chicago?

A. We didn't perform pickup and delivery ourselves in the Chicago area.

Q. How about 1953?

A. The same situation applied in 1953.

Q. 1952?

A. The same situation applied in 1952.

Q. When was the first time you performed any pickup and delivery service in the Chicago area?

A. Sometime after May 22, 1954.

449 By Mr. Mullin:

Q. Then since May, 1954, May 22, 1954, you have been engaged in pickup and delivery service here in Chicago?

A. That is not correct.

Q. I beg your pardon?

A. That is not correct.

Q. What is correct?

A. We are in the air freight forwarding business in the Chicago area.

Q. You just testified you performed pickup and delivery service here in Chicago, didn't you?

A. That is an incidental service to our air freight forwarding.

Q. That is part of your air freight forwarding service, is that correct?

A. Incidental service.

Q. Is that correct?

A. Yes.

Q. Will you describe what that part of the pickup and delivery service is here in Chicago, or anywhere?

A. The air freight forwarder performs a through service—

Q. I am asking you about the pickup and delivery
450 service. You have already described what your air freight forwarding position is.

A. We pick up at the shipper's store door.

Q. Yes?

A. We also deliver to the store door. The intercity movement is by air and the delivery to his store door or pickup from his store door to the air freight terminal of the air lines is normally performed by surface transportation.

Q. By surface transportation?

A. Yes, sir.

Q. That is a messenger service? A messenger service could perform that transportation, is that correct?

A. Depending upon the type of equipment he maintained.

Q. Do any messenger services perform that type of operation, ground operation of air freight forwarding?

A. Yes, some of them have.

Q. This City Bonded Messenger & Trucking Service, to your knowledge do they perform the ground operation for air freight forwarders?

451 A. They performed it for us.

Q. Do you know whether they performed it for anybody else?

A. At the present time?

Q. Yes, at any time.

A. They performed it for us. I have already stated that.

Q. I will ask you now whether they have performed it for anyone else.

A. Yes, they have.

Q. Do you know for whom?

A. I believe at the present time they performed it or perform it for the Hop Air Freight Commpany.

Q. H-o-p?

A. Correct.

Q. Are they air freight forwarders?

A. Yes, they are.

Q. Do you know of the Emery Air Freight Forwarding Service?

A. I have heard of them.

Q. Well, this Emery Air Freight Forwarding Service that you have heard of, are they bigger or smaller than you are?

A. I don't understand what you mean, bigger or

452 smaller.

Q. Well, in dollar volume.

A. Yes, they are.

Q. They are much larger than you are.

Do you know whether or not City Bonded Messenger performs any services for ground operations of air freight forwarding for Emery Air Freight Forwarders?

A. I don't know.

Q. The ground operations of air freight forwarding when performed by a messenger service, they require a CAB license?

A. It requires the filing of a contract.

By the Court: It what?

By the Witness: It requires the filing of a contract with the Civil Aeronautics Board.

By Mr. Mullin:

Q. Does it require a letter of authority or license, or whatever you want to call it, from the Civil Aeronautics Board to perform the ground operation?

By Mr. Cohen: Object. I think it is calling for a
453 legal interpretation of what CAB rules and regulations are.

By Mr. Mullin: He is an expert, and he has already testified. He knows about these things.

By Mr. Cohen: He is not a lawyer.

By Mr. Mullin: I am not asking him for that.

454 By the Court: Do you know?

By the Witness: It requires apprising the Civil Aeronautics Board by the parties, by either appearance by both parties before the Civil Aeronautics Board, and explaining the existence of the contract, or a written agreement outlining the charges that they will charge for performance of the services.

By Mr. Mullin:

Q. You testified you had some 350 agents. Now, do these agents perform the ground operations of air freight forwarding for you in these various cities?

A. Yes, they do.

Q. Do you have a contract with each other?

A. Yes, we do.

Q. Have you filed a contract for each one with the CAB?

By Mr. Cohen: Objection.

By the Witness:

A. We have filed a blanket contract listing the agents in that contract.

By Mr. Mullin:

Q. You have listed all 350?

455 A. Yes, we have.

Q. Do you have a copy of that blanket order or whatever you filed with the CAB?

By Mr. Cohen: If your Honor please, I will interpose another objection at this point. The question of what the CAB does and its relation to the plaintiff corporation is not in issue here. The question, the sole question before the Court is whether or not the plaintiff corporation can use the name of City Messenger Air Express and operate in the City of Chicago.

By the Court: What is your question? What is your pending question?

By Mr. Mullin: Whether he has a copy of the blanket order or contract he has filed with the CAB. Now, the issue of the CAB authority has definitely been raised in the complaint of the plaintiff. They have not only raised the issue, but have even cited from the economic regulations of the CAB, and are raising the issue that the

456 defendant has engaged in illegal air freight forwarding. I am trying to establish here—

By the Court: Well, he may answer.

By Mr. Mullin: Thank you, your Honor.

By the Witness:

A. We have a blank form of the contract.

By Mr. Mullin:

Q. A blank form?

A. Of the contract.

Q. Do you have the copy of the written contract?

A. No, I do not.

Q. You do not keep or did not keep a copy of that?

A. We did not have a copy of it?

Q. You did not keep a copy of the one you filed?

A. We say we filed it. It is on file.

Q. Since January 1955 have you engaged in the messenger service in Chicago, in the Chicago area?

A. No.

Q. Are you contemplating engaging in a messenger service in Chicago?

By Mr. Cohen: I will object to that line of questioning.

By the Court: He may answer.

457 By Mr. Cohen: The issue here is do we do business in the area—

By the Court: Find out what you want to.

Objection overruled.

By the Witness:

A. We don't contemplate operating under the name of City Messenger as a messenger.

By the Court: That was not the question.

By the Witness: Do we contemplate entering into a messenger service in any form?

458 By Mr. Mullin: You have answered the question.

By the Witness: I was answering the question his Honor asked me.

May it go into the record?

By Mr. Mullin: I am sorry, your Honor. Did I interrupt?

By Mr. Mullin:

Q. I will show you this—

By Mr. Mullin: I would like to have this marked Defendants' Exhibit 13.

(Thereupon said document was marked Defendants' Exhibit 13 for identification.)

By Mr. Mullin:

Q. I will show you Defendants' Exhibit 13 for identification, which purports to be an application under the

Illinois Motor Carrier Property Act before the Illinois Commerce Commission as a common carrier for general commodities, filed December 6, 1956, and ask you if you recognize that document.

A. Yes, I recognize the document.

Q. And that is an application made in the name
459 of City Messenger of Hollywood, Inc., doing business as City Messenger Air Express?

A. Yes, sir.

Q. The Civil Aeronautics Board letter of authority that you have, does that permit you to engage in the ground operations of air freight forwarding?

A. Incidental to air freight forwarding.

Q. Only incidental to air freight forwarding?

A. As a part of a through air freight movement. If a portion must move by air it is constituted under the authorization of the Civil Aeronautics Board, if a through bill has been issued.

Q. But it does not give you authority to operate as a common carrier in the messenger business in any particular area?

A. You mean as a common carrier ordinarily or as a common carrier surface operation in connection with air freight?

Q. Whatever you understand it to be.

A. It did not give us authority to operate as a surface common carrier in a surface manner, but does as a common carrier in a forwarding operation. We have applied for general trucking rights in the Illinois area, not
460 messenger rights, but general trucking rights.

Q. What do you mean by general trucking rights?

A. It is indicated in the document, I think. May I read the document?

Q. I am asking your recollection.

A. General as listed in the application, general commodities.

Q. And does that general commodities, would that permit you to pick up an envelope and deliver it from one place to another?

A. It would.

* * *

462 * * * By Mr. Mullin:

Q. Now, I believe you testified that an air freight 463 forwarder guarantees or is responsible for air shipments up to—what is it, $300,000.00, or something like that in value? I don't recall exactly.

A. I don't understand your question.

Q. Well, didn't you testify that an air freight forwarder is required to warrant or guarantee against loss any shipment that it handles up to a certain value, I think it was $300,000.00; I am not sure.

A. I don't recall making that particular statement.

Q. Well, do you recall what statement you did make?

A. Yes. An air freight forwarder issues a through bill and is responsible for the shipment from the consignor's door to the consignee's door.

Q. And what happens if a package is lost or damaged? Does the consignor or consignee have a claim against the air freight forwarder?

A. Yes, he does.

Q. And are you required to make good on that?

A. We are required to maintain adequate insurance coverage to assure that the claim will be properly 464 handled and if the people are due damages, why, they will be paid.

Q. And, of course, the Civil Aeronautics Board wouldn't issue a letter of authority except to a responsible applicant, is that correct?

A. That is correct, yes.

Q. A financially responsible applicant?

A. That is correct.

Q. Well, now, isn't it a fact that your financial responsibility is in such question that the United States Government has filed tax liens against you?

By Mr. Cohen: Objection. If your Honor please, a CAB permit has been introduced into evidence and this plaintiff corporation is operating under that CAB permit. I don't think there need be any necessity for going behind the issuance of that permit.

By Mr. Mullin: Well, he has testified—

By the Court: What is the relevance of the question?

By Mr. Mullin: I am attacking the credibility of
465 the witness.

By the Witness: No tax lien has ever been filed against me, personally.

By Mr. Mullin:

Q. I am speaking of City Messenger of Hollywood.

A. Well, make it clear, what you are talking about.

By Mr. Cohen: If your Honor please, I still object to this line of questioning. I don't believe it is pertinent to the issues of the case.

By the Court: What is the relevancy?

By Mr. Mullin: To attack the credibility of the witness, and, also, we have made an allegation in our counterclaim that the defendant has a high reputation for financial responsibility and the use of its name by someone who does not have a high financial responsibility or reputation, certainly goes to the very crux of the issues here involved, as to the unfair competition.

By the Court: Well, if it is necessary you have a right to go into it.

466 By Mr. Mullin: Miss Reporter, will you mark this Defendants' Exhibit 14 for identification?

(Thereupon said document was marked Defendants' Exhibit 14 for identification.)

By Mr. Mullin:

Q. Well, now, do you know of your own knowledge whether a tax lien was ever filed against City Messenger of Hollywood, a corporation, located at 1414 Cole Place, Hollywood 28, California?

A. Possibly.

Q. I hand you Defendants' Exhibit 14 for identification which purports to be a notice of a Federal tax lien under the Internal Revenue laws, 177430, District of Los Angeles, name of taxpayer; City Messenger of Hollywood, a corporation, 1414 Cole Place, Hollywood 28, California, dated October 1, 1956 and filed at the request of the District Director of Internal Revenue on October 8, 1956.

I ask you if you recognize that.

A. I have never seen this document before.

By the Court: I can't hear you.

467 By the Witness:

A. I have never seen this document before.

By Mr. Mullin:

Q. Well, now, if there were a tax lien filed against you, you, as president, would know about it, wouldn't you?

A. Yes, I would.

Q. Well, now, do you know or do you not know whether or not the tax lien was ever filed against you on that date?

A. I don't recall that particular date.

Q. You don't recall?

By the Court: When was the tax lien filed against your company, last fall?

By the Witness: There was one filed. I don't recall the last date, your Honor.

By the Court: Last fall?

By the Witness: That is correct, your Honor.

By the Court: By the United States?

By the Witness: Yes, your Honor.

* * *

27. Additions to and corrections of Appellant's Appendix, pages 120-121:

475 * * * Q. Did you ever purchase any assets of the Modern Delivery Service doing business under all those "City" names from the trustee in bankruptcy after the filing of the bankruptcy?

476 A. No.

* * *

28. Additions to and corrections of Appellant's Appendix, page 121:

480 * * * By Mr. Mullin:

Q. What was the amount of the tax lien that was filed against you?

A. I don't recall exactly.

Q. You don't recall exactly?

A. No, I don't.

Q. Is it the figure that appears on that photostatic copy (indicating)? Is that correct?

A. It could be.

By Mr. Mullin: Let the record show it is $4,964.76.

By Mr. Mullin:

Q. Now, what evidence do you have of the removal of that tax lien?

A. It will be in court tomorrow morning.

Q. I asked you, what evidence do you have?

A. We have a relief from the United States Government.

Q. Are you familiar with the Chicago classified directory? I mean, are you familiar with it as it pertains to your business?

A. Yes.

Q. Do you have a listing under "Messenger Ser-

481 vice" in the Chicago classified directory?

A. We may have.

By the Court: I can't hear you.

By the Witness: We may have, your Honor, I don't specifically know.

By Mr. Mullin:

Q. You don't specifically know?

A. If you will show me the book, I will, probably.

Q. But you are the president of the corporation?

A. Well, this is—

Q. I direct your attention to page 1236 of the Chicago classified telephone directory, December, 1956, and ask you if you find—

A. Yes, I see our ad. We are listed here.

By Mr. Mullin: Is there any objection to this?

By Mr. Cohen: There is no objection.

* * *

482 * * * By Mr. Mullin: I will just read it into the record.

Page 1236 has the following listing:

City Messenger of Hollywood, Inc., 845 South Wabash Avenue, Wabash 2-1850, and that appears under the heading "Messenger and Delivery Service."

* * *

29. Additions to and corrections of Appellant's Appendix, pages 124-125:

TESTIMONY OF WALTER HERMAN BREITBARTH

497 * * * It is your understanding from a Certificate of Public Convenience and Necessity, that this tells you what you can do in your business, is that right?

A. That is right.

Q. And, therefore, you are governed by what you understand this to be?

A. Yes, sir.

Q. There was some kind of a hearing on this certificate of public convenience, wasn't there?

A. Yes, sir.

Q. And as a result of it, there was an order entered by the Illinois Commerce Commission and this came out of it, isn't that right?

A. Yes, sir.

498 Q. Now, you stated in response to the questions put to you by Mr. Cohen, that you read that paragraph which stated what you could carry?

A. Yes, sir.

Q. And he asked you some questions as to whether you thought you could carry an envelope and you said you thought you could. Have you ever carried one?

A. I had no call for it as yet.

Q. You have had no call for envelopes. You don't do messenger service, then, do you?

A. No, sir.

Q. But you did read this list of commodities and you felt that under the term "general cartage" you could carry most anything, isn't that right?

A. That is right.

Q. I want to call your attention to paragraph 6 on page 2 of this particular document and I would like to have you read it aloud so that everybody can hear it.

By the Court: Why don't you read it?

By Mr. Silverman: I will read it. "No. 6: That the Commission finds that the term 'general cartage' as

499 contained in such certificate of public convenience and necessity, is not a commodity description, but rather is service description and that it does not increase the category of commodities specifically mentioned in said certificate."

By Mr. Silverman:

Q. Now, doesn't that tell you that you can't carry anything more than the specific things that you said and that general cartage merely is a designation of the kind of service you are engaged in with respect to these particular commodities? Isn't that what that says?

A. I presume it does.

Q. You have had this certificate for two years, haven't you?

A. Yes, sir.

Q. And you have been carrying, printing machinery—oh, excuse me—shoe machinery and shoe polish and chemicals and I think you decided that you wanted to carry brooms during the time that this was going on, a specific article?

A. Yes.

Q. And you felt that it would be necessary to 500 get permission specifically to carry brooms, is that right?

A. Yes, sir.

Q. So you asked the Commission to put in a special paragraph and that was paragraph—oh, some paragraph in here, isn't that right?

A. Yes.

Q. So, really, your business is very specific, isn't it?

A. Well, according to that, I would say yes.

Q. Now, do you serve any particular industries?

A. I serve the broom business.

Q. The broom business?

A. The shoe machinery business.

* * *

504 * * * Q. Now, Mr. Breitbarth, what do you know about this case, if anything?

A. Well, all I understand is that the name "City" is involved in it and I want to protect my name.

Q. You want to protect your name?

A. My name "City."

Q. Are you represented by an attorney here today?

A. Well, he is the defense over there (indicating).

Q. Who is your attorney?

A. Mr. Cohen, I believe.

Q Mr. Cohen is your attorney?

A. Well, he is today, yes.

Q. When did he get to be your attorney?

A. When the subject came up, I was notified by him about this and I have appeared here voluntarily with this information.

Q. Well, now, at the time he called you he wasn't 505 your attorney, was he?

A. No, sir.

Q. Well, what did he say to you on the telephone?

A. That the name "City" in my name of City Loop was in jeopardy.

Q. He told you that?

A. Yes, sir.

Q. And what did he suggest you do?

A. Appear here as to the extent and the length of time we have had this name, to keep it.

By Mr. Silverman: I am sorry.

Miss Reporter, will you please read the answer of the witness?

(Whereupon the answer was read as above corded.)

By Mr. Silverman:

Q. And when did you appear here first?

A. This morning.

Q. This morning?

A. Yes.

Q. Now, do you know who Irving Mansfield is?

A. Who?

Q. Do you know who Irving Mansfield is?

A. No, sir.

506 Q. Do you know who City Bonded Messenger is?

A. No, sir, except I just heard of their name.

507 Q. You have been in the trucking business for thirty years and you have never heard of City Bonded Messenger Service?

A. No. It never conflicted with my business so I never paid any attention to it.

* * * *

31. Additions to and corrections of Appellant's Appendix, pages 133-4:

TESTIMONY OF BENJAMIN FULLMAN

571 Q. Mr. Fullman, I show you Defendants' Exhibit 16 for identification, comprising inter-house correspondence dated December 13, 1954, from Ben Fullman to Irving Mansfield and ask you if you can identify that.

572 A. Yes.

Q. Can you identify that?

A. Yes.

Q. Is that a letter that you sent to Irving Mansfield on December 13, 1954?

A. It was just a memo.

Q. A memo?

A. Yes.

Q. Now, the subject is mentioned as "Christmas cards." Did you send some Christmas cards along with that? Was that sent in connection with the sending of some Christmas cards?

A. Yes, that is right.

Q. And these are the Christmas cards that you sent?

A. Yes.

By the Court: "These" are what?

By Mr. Mullin: These are the Christmas cards that he sent.

By the Court: "These" is what number?

By Mr. Mullin: Defendants' Exhibit 15. I am sorry. By Mr. Mullin:

Q. Well, now, Mr. Fullman, the Christmas card

573 states: "City Messenger Air Express, Division of City Bonded Messenger Service."

Now, isn't it a fact that you put that on there so that people here in Chicago would identify City Messenger Air Express with City Bonded Messenger Service here in Chicago?

A. No.

574 By Mr. Mullin:

Q. Why did you put that on there?

A. We wanted that sent out to all the people who had used City Messenger, and in printing the thing they were late in being printed, so we sent the printer — he stuck in the word "Bonded." The "Bonded" was no part of our name in New York and no part of our name in Los Angeles, but because of the lateness of the thing, if we had sent them back we would not have had any Christmas cards.

Q. These cards were —

A. Let me finish, please.

Q. Pardon me.

A. The card that we have has a little mark on here where it says "City Messenger Service" and right at the end it says "bonded," letting them know we had a bonded service, but the printer, in printing up the card, stuck it in as part of the name.

Q. Isn't part of your name City Messenger Service of Hollywood, Inc., isn't that the name of your corporation?

A. We were not advertising the name of our corporation. We were advertising City Messenger Service.

575 Q. You put that you were a division or something?

A. City Messenger Service, City Messenger of Hollywood, whichever way you want it. In California and New York we are known as City Messenger.

Q. The printer forgot to put the the "Hollywood, Inc." on there —

A. He wasn't told to put that on; he was told to put "City Messenger Service."

32. Additions to and corrections of Appellant's Appendix, page 137:

TESTIMONY OF IRVING MANSFIELD

599 By Mr. Levin: If the Court please, there is a lot of documentary evidence now being introduced. It is merely accumulative to the point, to show that the name City Bonded Messenger Service has been used since 1943 or 1944. I think they have established that by the great weight of the evidence and it seems to me that a lot of these exhibits are entirely unnecessary.

By the Court: That may be so, but—

By Mr. Levin: I submit to the Court—

By the Court: Are you objecting?

By Mr. Levin: For that purpose, yes. I think we
600 have enough evidence in here to show that.

By the Court: The objection is overruled. There has been a lot of controversy between these folks. The objection is overruled.

33. Additions to and corrections of Appellant's Appendix, page 139:

612 * * * Q. Now, I direct your attention to the fact that you say you are enclosing a new rate chart, and the answer you read discusses a brochure.

613 A. That is right.

Q. Can you explain that?

A. In our business a rate chart and a brochure is one and the same, and always has been.

Q. Do you know what rate chart and what brochure is referred to in that?

A. This one here, the one like you have in your hand.

Q. Defendants' Exhibit 42?

A. That's right.

* * *

34. Additions to and corrections of Appellant's Appendix, page 142:

621 * * * Q. Now, at the time that you adopted the name of City Bonded Messenger Service, I believe that was your first name in 1942 or 1943, how did you select that name?

By Mr. Cohen: Objection.

By the Court: He may state it.

By the Witness:

A. Well, that was the name when I was connected with Cannonball. When I was connected with Cannonball, at the time, we were in a little trouble with the bankruptcy court. The creditors had thought Cannonball was assets of the Twentieth Century that had gone bankrupt and it looked for a time like the creditors would obtain Cannonball and if they would, why, they would take over.

I talked to Mr. Fullman previously, in 1934, 1935,
622 about the name City. I mentioned that if the creditors gained—would gain hold of City Messenger—I mean, of Cannonball, why, I don't know who would operate it for them because, at that time, I think we were about the only messenger service in Chicago and if they had gained control of it, I was going to open under the name of City Bonded Messenger Service. It so happened that the court allowed us to keep Cannonball.

By Mr. Cohen: If the Court please, I move to strike the entire answer as not being responsive to the question.

By the Court: The objection is overruled.

* * *

35. Additions to and corrections of Appellant's Appendix, page 144:

630 Q. Now, just getting back to this first telephone conversation you had with Mr. Fullman when you

mentioned the fact that there had been this bankruptcy and you didn't see how he could come to Chicago, did he make any reply to that statement by you?

By Mr. Cohen: Objection, if your Honor please. Counsel is leading the witness.

By the Court: No, I don't think so.

By Mr. Mullin: I am asking him if there was any reply.

By the Witness:

A. Yes. When I came back and told him about the bankruptcy he said that he would step down as president and stay in the background in an advisory capacity, and that I could become the president, and he said that Elliott or Sidney or Norvin would also be officers.

* * *

37. Additions to and corrections of Appellant's Appendix, page 146:

637 * * * Q. Did you have any conversations with Ben Fullman concerning the air freight forwarding business and the part that City Bonded Messenger should play in it?

A. Yes. After I returned from Los Angeles I did.

Q. No. I am speaking—

638 A. Pardon me?

Q. —of the period before that.

* * *

Q. I am referring to the period before Labor Day week-end, 1954.

A. Oh, yes. That started in, I think, May of 1954, that we were to handle it at the time and until an agreement was signed and that we reach some agreement whereby we would have fifty per cent of the corporation, that City Bonded Messenger would.

Q. Did you engage in air freight forwarding, then, prior to Labor Day week-end, 1954?

639 A. Yes. We engaged in air freight forwarding from the first day that the certificate was issued. I think that was May or March of 1954.

* * *

38. Additions to and corrections of Appellant's Appendix, page 148:

645 * * * By Mr. Mullin: Now, your Honor, I have discussed this with counsel for the plaintiff and we 646 have agreed to stipulate concerning these listings in the telephone directories rather than trying to introduce the directories themselves.

Let the record show that the first listing in the classified telephone directory of Chicago for City Bonded Messenger Service, 221 North State Street, Randolph 6-6001 was in the March, 1944 issue of the Chicago classified directory.

Thereafter, there were listings continuously for every issue, up to the present date; that beginning with September, 1945, there were advertisements of various sizes appearing both under "Messenger Service" and under "Trucking"—these are called display ads—and there were listings under "Air Freight" beginning in December, 1954;

That the address of City Bonded Messenger Service appeared as 221 North State Street to and including the March, 1946 issue; that beginning with the September, 1946 issue, the address was listed as 217 LaSalle 647 Street;

That this address continued but with the same telephone number until the September, 1951 issue, at which time the address was listed as 193 North LaSalle Street and 227 North Ontario.

* * *

650 * * * Q. For which air freight forwarder do you perform the largest or the most work?

A. I believe that Emery Air Freight are giving us in the neighborhood of around $500 a week business at the present time.

Q. When did you start performing this service for Emery Air Freight?

A. Subsequent to January, 1955, when we severed the relationship with City Messenger Air Express.

Q. Prior to that, had you ever performed any services for Emery Air Freight?

A. We didn't perform any services for them but they had made proposals, they asked to perform services and inasmuch as we were serving and financially associated with City Messenger Air Express, they thought it too dangerous to give us any of their business until
651 January, 1955, and until that time we didn't get any of their business.

By Mr. Cohen: If your Honor please, I will move to strike all the testimony after the words that he didn't perform any services.

By the Court: Well, I don't know where to strike, but the thought may go out, what the Emery men thought. That may go out.

By Mr. Mullin:

Q. Was there any reason given to you by Emery Air Freight for not giving you that business?

By Mr. Cohen: Objection.

By the Court: I guess he may answer that.

By the Witness:

A. Oh, definitely.

By Mr. Cohen: If your Honor please, this would be conversations taking place outside of the presence of the plaintiff.

By the Court: Well, he is out trying to get business and if somebody says, "I won't give you any business as long as you are doing business for so-and-so," that isn't a conversation; that is a fact.

By the Witness: Definitely.

652 I had many meetings with Emery, with Mr. Clear and Mr. Connors. They were very anxious to have us perform the ground operations only when we could sever our connections with City Messenger Air Express and, until then, they never gave us one dollar's worth of business.

* * *

39. Additions to and corrections of Appellant's Appendix, page 149:

656 * * * Q. Now, prior to May, 1954, did you have any charge accounts with any of these companies you just mentioned?

* * *

A. No, we never had any charge accounts—

* * *

A. (Continuing) We didn't have any charge accounts with any of the air lines regarding shipping freight; we didn't have a charge account with Western Union, and I don't believe we had a charge account with Railway Express.

40. Additions to and corrections of Appellant's Appendix, page 152:

679 Q. Then this statement is not true, that he, meaning you, received a telephone call from Mr. E. W. Nissen of the Illinois Bell Telephone Company, advising him that City Messenger Air Express of 845 South Wabash had applied for a listing in the telephone directory?

A. Yes, that is true.

Q. That is true. You were not operating a company under that name, is that correct?

A. That name?

Q. Under the name of City Messenger Air Express?

A. Well, we still had City Messenger Air Express. We were not operating any air freight forwarding, no.

Q. What were the operations of City Messenger Air Express, your company, on January 19, 1955?

A. We performed the ground operations; and still perform the ground operations of air freight.

Q. Then you are advertising yourself as City Messenger Air Express?

A. No, we don't have the title of City Messenger Air Express. There was a listing—

680 Q. Do you have—

By Mr. Mullin: Let him finish his answer.

By the Witness:

A. (Continuing) There was a listing in the book, City Messenger Air Express, and that was still from the time we were in business with the City Messenger Air Express, the Fullmans, and I couldn't take it out at that time.

By Mr. Cohen:

Q. That was Randolph 6-2391?

A. I believe it was, yes.

Q. Was that the telephone number that you earlier testified you secured at Fullman's request?

A. That telephone number was secured at their request, but we received, I would say, ten calls for City Bonded Messenger on that phone to one for City Messenger Air Express.

41. Additions to and corrections of Appellant's Appendix, pages 153-154:

685 • • • By Mr. Cohen:

Q. I will show you Plaintiff's Exhibit 23 for

identification, which is a hand with a ball at the end, being a telephone dialer. Through the word "City" in script is a messenger boy running through the letter "C" and imprinted thereon is City Messenger Air Express, Murray Hill 5-1666.

I will ask you whether or not you recognize that exhibit. I will ask you also to look at the defendants' exhibit, and compare them.

A. Yes, I knew of these.

Q. Weren't they purchased from the Glidden Company at the same time?

686 A. No, they were not.

Q. Directing your attention to Plaintiff's Exhibit 23, when was that purchased, Mr. Mansfield?

A. That was purchased after I had distributed close to 10,000 of these.

Q. What day or month and what year were they purchased?

A. I couldn't tell you the day of the month.

687 By Mr. Cohen:

Q. Directing your attention to Defendants' Exhibit 43, tell me the day or the month and year that that advertising material was purchased.

A. I couldn't tell you the exact month but it was prior to this.

By the Court: "Prior to this", you know—you have to require—

By Mr. Cohen: Plaintiff's Exhibit 23, if your Honor please.

By Mr. Cohen:

Q. You don't know when?

A. No, but it was prior to that.

Q. May I have that?

A. Yes, surely.

Q. But all you know is that it was prior?.

By the Court: Well, he told you he had distributed 10,000, didn't he, of his before the others came out?

By Mr. Cohen:

Q. Did you order these for the City Messenger Air Express?

By Mr. Mullin: What do you mean? I object to "these." What is "these"?

688 By Mr. Cohen: I am sorry, Counsel.

By Mr. Cohen:

Q. Did you order Plaintiff's Exhibit 23 for the plaintiff, from the Glidden Company?

A. No, I did not order them.

Q. Do you know who ordered these?

A. Yes, I do.

Q. Who?

A. Mr. Ben Fullman.

Q. Where is the company located, the Glidden Company?

A. The factory is located in the east somewhere but the representative is here in Chicago.

By Mr. Cohen: If your Honor please, I will introduce in evidence at this time Plaintiff's Exhibit 23 and Plaintiff's Exhibit 22.

By the Court: Any objection?

By Mr. Mullin: No objection.

By the Court: They may be received.

(Said documents, so offered and received in evidence, were marked respectively, Plaintiff's Exhibits 22 and 23.)

689 By Mr. Cohen:

Q. Oh, directing your attention to page 13 of Plaintiff's Exhibit 22, which is a copy of a City Messen-

ger of Hollywood, Inc., doing business as City Messenger Air Express, forwarding air bill bearing number 00021, I ask you whether or not those are the same air bills as the one that you identified as Plaintiff's Exhibit 1.

By Mr. Mullin: Where is Plaintiff's Exhibit 1?

By Mr. Cohen:

Q. I will show you both exhibits.

A. I believe this is the photostatic copy of it, yes.

Q. Now, the copy of the bill that appears in this application was one of 5,000 that you had in your possession while you were associated with City Messenger Air Express; is that not true?

A. I don't know if that is the one. We had 5,000 in our possession.

Q. And they ran from 0001 to 5,000, isn't that correct?

A. I couldn't give you the serial numbers on them, no, sir.

690 Q. Would there be any other way that you would have gotten possession of one of these air bills?

A. Other than—

Q. Any more particularly than this air bill?

A. Other than what?

Q. Other than having them as a result of your association with City Messenger Air Express.

A. No, sir. No, sir.

Q. And these are the same bills that you ordered for City Messenger Air Express in March of 1954, is that right?

A. Yes, sir, they are, sir.

Y. And you ordered them for City Messenger Air Express, is that right?

A. That is right, sir.

Q. And yet you would have us believe that you didn't

know the full meaning of this telegram and I am showing you a copy of Defendants' Exhibit 9.

Yet you would have us believe that you didn't know that when Mr. Ben Fullman sent this telegram to you when he issued City Messenger Air Express that it didn't mean City Messenger of Hollywood, Inc., doing business as City Messenger Air Express?

691 A. Let me see that.

I believe we did not receive the forms until weeks after we received this telegram.

692 Q. But you did say that you ordered them for them and you placed the copy with the company, the Uarco Company, isn't that right?

A. I worked on the copy with Mr. Fullman, yes.

Q. You testified, didn't you, that during the period of time that you were associated with City Messenger Air Express you handled no other account for any other air freight forwarder, is that true?

A. As far as I can recollect, that is so.

Q. And it was during this time that you were working for City Messenger Air Express that you received entreaties from Emery Air Express, isn't that right?

A. Yes, that is true.

Q. And you told them that you couldn't handle their business while you were associated with City Messenger Air Express, isn't that true?

A. No. I told them that I wanted to handle their business. That was part of my operation. Their answer to me was that they couldn't give me that type of business because, originally, I asked them why and they said the original tariff that was filed by City Messenger Air Express was our own tariff and it is "one of the reasons why we couldn't give you the business."

693 By Mr. Cohen: I move that the answer be stricken as not in answer to my question that was before the Court.

By Mr. Mullin: You led the witness into it.

By the Court: Read the question and the answer.

(Whereupon the question and answer were read as above recorded.)

By the Court: Let it stand.

By Mr. Cohen:

Q. Do you have a contract with Emery Air Express now?

A. Yes, we do.

Q. Is that contract on file with the CAB?

A. All of their carriers are under contract, yes.

Q. Is your contract with Emery on file with the CAB?

A. I suppose it is, yes.

Q. You don't know?

A. For sure, I don't, no.

Q. Do you have a contract with Hop Air Freight?

A. Yes.

Q. Is your contract with them on file with the CAB?

694 By Mr. Mullin: I will object to these questions. The witness doesn't know whether they are on file or not. That is up to the licensee to file and not up to him.

By Mr. Silverman: Counsel, why don't you ascertain whose duty it is to file the contract?

By Mr. Cohen: I am waiting for a ruling from the Court.

By the Court: Well, I don't know what the law requires. He may answer it, if he knows.

By Mr. Cohen:

Q. Do you know?

A. Will you repeat the question, please, sir?

Q. Do you know whether or not your contract with Hop Air Freight, with Emery Air Freight, is on file with the CAB?

By the Court: He has answered as to Emery.

By Mr. Cohen:

Q. Well, as to Hop, do you know whether or not your contract is on file?

A. I don't know. That would be up to them to file. I wouldn't know.

• • •

42. Additions to and corrections of Appellant's Appendix, pages 154-155:

696 • • • Q. Now, you never offered any money to file a petition at the CAB, did you, offer any money to the Fullmans?

A. Well, it really didn't require any money to file a certificate with the CAB.

Q. You never offered any money to defray expenses for the filing of the petition, is that true?

A. No, I did not.

Q. You did not offer any money?

A. No, sir.

Q. But you did agree with Ben Fullman, in December of 1953, to handle his business in Chicago, is that true?

A. No, sir, I did not.

Q. Was it March of 1954 that you agreed with him to handle his business in Chicago? I am talking about the City Messenger Air Express business.

A. It was prior to that.

Q. Was it February?

A. It was prior to the CAB permit, when and if he got the CAB permit.

Q. When and if he got the CAB permit, you agreed to handle his work in Chicago?

697 A. No, sir.

Q. No?

A. No, sir, only a partnership basis.

698 Q. What was the month, the day and the year, to the best of your knowledge, that this conversation took place?

A. Well, I think I stated in my testimony that his first call to me was in the early part of 1953, from Los Angeles, long before he ever secured the permit, and it was on that basis that we discussed that if we entered into an agreement, that it would be on a 50-50 basis.

Q. And this was over the telephone?

A. Over the telephone, and I think there is some correspondence to that effect, too.

Q. You say there is some correspondence that he agreed to give you 50 per cent of the City Messenger Air Express business?

A. I don't know if it was that particular phase, but there is correspondence relating to the arrangement.

Q. And is that in evidence, that letter?

A. I did not say it was a letter about the money. I said there was evidence of the correspondence, yes, that has been entered.

Q. What does it say? What does that letter say?

A. It mentions something about agreements.

699 By Mr. Mullin: I will object. It speaks for itself. If you want to refer to anything specific—

By the Court: Sustained.

By Mr. Cohen:

Q. It is true you never contributed any money, is that right, towards City Messenger Air Express?

A. No, that is not so. I am out—

Q. In September—

A. I haven't finished.

Q. In September, 1954, it is true that you went to Los Angeles?

A. I made two trips to Los Angeles; yes, sir.

Q. In September of 1954?

A. Then, yes, and in—

Q. When did you make your first trip?

A. That was the first trip, I think.

Q. And when did you make your second trip in September of 1954?

A. I didn't make a second trip—in December of 1954, December, yes.

Q. In September?

A. No. Just one trip in September.

Q. Just one trip in September?

700 A. Yes.

Q. And you said this was over the Labor Day week-end?

A. That is right, sir.

Q. Describe the office at 1414 Cole Place in Los Angeles.

By Mr. Mullin: Oh, I will object. That is immaterial.

By the Court: Do you thing that is necessary?

By Mr. Cohen: Yes.

By the Court: Why?

By Mr. Cohen: Well, I will withdraw the question.

* * *

43. Additions to and corrections of Appellant's Appendix, pages 156-157:

713 * * * Q. When did you call him on the telephone and tell him you were discontinuing service in Chicago?

A. That was understood when I left Los Angeles
714 when he played back the tape recorder, that we couldn't have a 50 per cent share, and I told him at that time, "Ben, I don't want to represent you or want your name in Chicago in the City Messenger service. It is too conflicting with ours.

Q. But you and the plaintiff corporation are not in conflict in Chicago?

A. Yes, they are performing the same service.

Q. They are performing the same service?

A. Yes, sir, they are.

Q. You say your are in the air freight forwarding business?

A. No, I am not in the air freight forwarding business.

Q. But you say the City Air Express is in the messenger service?

A. Yes, they perform messenger service in Chicago.

Q. They do perform messenger service in Chicago by air freight forwarding?

A. No, not by air freight forwarding.

By Mr. Silverman: Your Honor, I think there is argument here.

715 By the Court: Yes. We don't get anywhere by playing with words. We could do that for another week or two.

By Mr. Cohen: No further cross. Well, just one more —no, I am sorry. Nothing else.

Redirect Examination by Mr. Mullin.

Q. When was the first time you filed under the Assumed Name statute?

A. In 1943 I filed under the name of City Bonded Messenger Service.

Q. Why did you file under the Assumed Name statute in January, 1955?

By Mr. Cohen: Objection.

By Mr. Mullin: That was raised.

By the Court: He may answer.

By Mr. Cohen: If your Honor please, that was not brought out by cross examination. I just confirmed the fact that he did.

By the Court: I think it was. Overruled.

716 By the Witness:

A. I am familiar with the statute, and I knew I had to file an assumed name in the City of Chicago, and inasmuch as we held ourselves out as being City Messenger Air Express in this area here where we were responsible for all bills and everything, on the advice from my counsel he said I should register it under an assumed name.

By Mr. Mullin:

Q. You testified that you formed two separate corporations, rather, that you changed the name of the City Messenger & Trucking Service, Inc. to City Messenger Service, and then formed another corporation and called it City Bonded Trucking Company?

A. City Trucking Company.

Q. Why did you form two separate corporations?

By Mr. Cohen: Objection.

By the Court: Let him answer.

By the Witness:

A. There are two reasons. The main reason was union affiliations. They put pressure to use that as long as both of them were together the messengers would have to join a union. That was the main reason.

717 The second reason was taxwise. My auditors advised me to form two corporations.

718 Q. Now, this telegram, which is Defendants' Exhibit 9, from Ben Fullman to you, stating the CAB

approval was issued to City Messenger Air Express, what, if anything, did that mean to you?

By Mr. Cohen: Objection.

By the Court: What was the question, the last part of your question?

By Mr. Mullin:

Q. What, if anything, was meant when you read this, that registration was approved to City Messenger Air Express?

By the Court: To the witness, you mean?

By Mr. Mullin: Yes.

By the Court: Let me see it.

Now, what was your question?

By Mr. Mullin: My question is, what, if anything, it meant to him, that is, the words saying "Registered and issued to City Messenger Air Express" referring to the letter of authority license.

By the Court: You mean what, City Messenger Air Express on the first line and second line?

By Mr. Mullin: That is right.

719 By the Court: What is meant to Mr. Mansfield?

By Mr. Mullin: Yes.

By the Court: Well, he can tell us what he thought.

What did you think?

By the Witness: I thought the certificate was issued in the name of City Messenger Air Express, and no other name.

By Mr. Mullin: That is all.

* * *

44. Additions to and corrections of Appellant's Appendix, page 158.

TESTIMONY OF NORVIN FULLMAN

723 * * * Q. Do you engage in any messenger service?

A. We do not.

Q. Have you ever engaged in any messenger service in the Chicago area?

A. Not to my recollection. I have only been here since August.

Q. Since August; that is what I am referring to?

A. No.

Q. Now, you filed an application for a certificate of necessity and authority as, I believe it was a common carrier, and you signed the application. Why did you file that application?

By Mr. Cohen: Objection. I think the testimony here is that he didn't sign it, that Sidney Fullman signed it.

By Mr. Mullin: No, it was Norvin Fullman. I don't care. It doesn't make any difference.

By Mr. Silverman: No, it was signed by Norvin.

724 By Mr. Cohen: Then I will withdraw my objection.

By Mr. Mullin: Will you answer the question, please?

By the Witness: Will you repeat that?

(Thereupon the question was read as above recorded.)

By the Witness:

A. That is true and according, I believe, to some of the rulings in the State of Illinois, and the states differ, I was not quite sure about it myself, and we wanted to cover ourselves in any case, because although we are performing our type of service some of those might fall in a different category, although under the CAB it might be correct but it might not be according to what the state would allow.

By Mr. Mullin:

Q. Isn't it a fact that you intended to handle a messenger service here in Chicago and that is why you filed this application?

A. That is not true.

By Mr. Mullin: Will you mark this document Defendants' next exhibit number?

725 (Thereupon said document was marked Defendants' Exhibit 48 for identification.)

726 By Mr. Mullin:

Q. Now, I have here a certified copy of the certificate of authority of City Messenger of Hollywood, Inc., filed February 4, 1955, with the Secretary of State, to operate as a foreign corporation here in the State of Illinois, and the very first purpose or purposes which is mentioned here is:

"A. That said corporation shall primarily engage in a general messenger and delivery service."

A. May I see that, please?

Q. Now, I ask you if that is not your intent and purpose here?

A. No, it is not.

Q. And you say that despite the fact that your certificate of authority states that?

By Mr. Cohen: If your Honor please, I think that is a question or a matter that is before the Court here. The Court will recall we have filed and there has been admitted in evidence the original charter issued from the State of California and I think, on a comparison of the documents, the document that counsel has in his hand
727 at the present time and the charter issued in California, that they were identical powers, and, therefore, I am objecting to any further questioning along that line.

By the Court: No. The objection is overruled.

By Mr. Mullin:

Q. Now, do you know what the first date was that City Messenger of Hollywood, Inc. began to transact business in the State of Illinois?

A. No, I am not sure of that at all. I was not here at the time.

Q. Well, you are secretary and treasurer of the corporation. How long have your been secretary-treasurer of the corporation?

A. I have actually been secretary and treasurer since about—well, just before I went in the Army, in 1951, and then I was in the Service for two years and I turned it over to another person and when I got out of the Service after the war, I was put back as secretary and treasurer.

Q. Well, now, do you know the approximate date, then, when you started here in the Chicago area, to transact business?

728 A. I don't recall that date because I was not in this area at the time.

Q. Well, does the date of January 20, 1955 help you to recall the date that you commenced to transact business here in Illinois?

A. No. I was not here at the time. I was in a different part of the field completely.

By Mr. Mullin: I offer into evidence this certified copy of the certificate of authority to transact business in the state.

By the Court: Yes. When was it filed?

By Mr. Mullin: It was filed February 4, 1955.

By the Court: It may be received.

* * *

45. Additions to and corrections of Appellant's Appendix, page 159:

732 Q. Have you at any time since August, that you know of, since August, since your employment here, at 733 any time received any telephone calls from customers seeking messenger service?

A. Yes, sir.

Q. And what did you do with those calls?

A. We referred them to Cannonball.

Q. And that applies to every time that you received a call?

A. That is right. They probably have gotten quite a few calls from us.

Q. Well, what do they say when they call you, these customers?

A. They have asked if we can make a pickup for them and, of course, we answer, "It is CMAX, City Messenger Air Express," and they say, "Can you make a pickup for me?" And, we say, "To what city is it going to?" And they say, "It is local," and we say, "This is City Messenger Air Express; we are air freight forwarders. Do you have something going out of town?" And they say, "No; it is local," and we say, "Why don't you call Cannonball?" Sometimes they ask for a recommendation and sometimes they hang up.

Q. Isn't is a fact that sometimes they ask if you are City Bonded Messenger & Trucking Service?

734 A. No, not to my knowledge.

By Mr. Mullin: That's all.

* * *

46. Additions to and corrections of Appellant's Appendix, pages 162-164:

TESTIMONY OF ANNE M. LOMBARD MAURICE.

754 Q. Directing your attention to the years 1953 and 1954, do you recall any conversations or were you present at any conversations which took place between Mr. Ben Fullman and Mr. Mansfield?

A. I was present at several conversations. I didn't participate in them, but Mr. Fullman came to the offices of the City Bonded Messenger at 2—at 193 North La Salle Street, in 1953 or 1954, the early part, and they were discussing the business of air freight forwarding.

I mean, the conversation was between the two men, but I was present.

Q. And that was in 1953 or '54?

A. Yes.

Q. Do you recall any conversations which took place in your presence after that?

A. Mr. Ben Fullman came through from Los Angeles, I believe, on his way to Washington with regard to the CAB permit, to gain an approval, which he also discussed with Mr. Mansfield in the office.

Q. Did you overhear any of those conversations?

755 A. Well, verbatim, no. I couldn't repeat their conversation verbatim. It was with regard to this particular subject, approval of the CAB permit, and Mr. Mansfield and he were negotiating for this new air freight business.

Q. Did you overhear these conversations concerning the negotiation with Mr. Mansfield?

A. Partially, yes.

Q. Can you repeat any of the conversations, as much as you can recall?

A. Well, Mr. Fullman was talking—

By Mr. Cohen: May I interrupt just for the purpose of getting the time and place, and date, of each conversation she overheard?

By Mr. Mullin: All right.

By Mr. Mullin:

Q. Let's take the first conversation you overheard and place the date, time and place.

A. I believe it was in March.

Q. Of what year?

A. 1954. He was on his way to Washington. Prior to that he had been in the office and they were discussing things that I didn't participate in, but I was given to

understand by Mr. Mansfield in the presence of Mr.
756 Fullman that this was to be a new corporation.

Q. And do you recall who was to participate in this new corporation?

By Mr. Cohen: Objection.

By Mr. Mullin: She said she heard the conversation.

By the Court: Have her tell all she can remember. Give the time and place and who was present.

By the Witness:

A. Mr. Ben Fullman was in the office discussing the CAB permit, the approval he had hoped to gain when he visited in Washington, and then he was going to New York, and he asked Mr. Mansfield to discuss the accounts and operations of City Bonded Messenger, and that it was very good for us to be performing this ground operation, that our account was so well established, that we had between two and three thousand accounts at that time, and we would fit in perfectly.

I was given to understand at that time that Mr. Mansfield was to be an officer of this new corporation, which was to be a private corporation between the Mansfields and the Fullmans. This was the City Messenger
757 Air Express.

By Mr. Cohen: I move to strike everything after "I was given to understand."

By the Witness: How else do you put it?

By the Court: Madam, how were you given to understand? Did you hear them talking about it?

By the Witness: Yes, definitely.

By the Court: Well, let it stand.

By Mr. Mullin:

Q. What, if anything, occurred in the office after that conversation?

A. Mr. Elliott Fullman came to our offices, and he had space and worked in and out of the office and worked

with our salesman, Mr. Gilbert, getting acquainted, and our Mr. Gilbert took him to see the accounts. They were negotiating and preparing to get this business started, for CMAX.

Q. Directing your attention now to the Labor Day weekend or thereabouts in 1954, do you recall anything that happened during that weekend or just shortly prior thereto?

A. Mr. Mansfield went to Los Angeles.

Q. How do you know that?

758 A. I got his reservations for him. He was going to discuss this with Mr. Ben Fullman, and also to make arrangements with his brother.

By Mr. Cohen: Your Honor, I object.

By the Court: Sustained.

47. Additions to and corrections of Appellant's Appendix, pages 169-170:

TESTIMONY OF ROBERT CHARLES McARTHUR

787 By Mr. Mullin:

Q. Now, you have already identified this as your file of the City Messenger Air Express bills.

A. That is correct.

Q. Of air bills. Now I direct your attention to the first all, dated 9/24/56 showing the insignia "City" with the little boy running through it and the script and "Bonded Messenger", and I ask you is that the bill of the City Messenger Air Express or of City Bonded Messenger Service?

A. City Messenger Air Express.

Q. City Messenger Air Express?

A. What I call now City Messenger Air Express, yes, sir.

Q. What you call City Messenger Air Express?

A. Yes.

Q. That refers to a pickup at the Greyhound Bus Depot?

A. That is correct.

Q. To be delivered to the Admiral Corporation in West Chicago, Illinois?

A. That is correct.

Q. Referring now to this same pickup ticket, dated 9/24/56, what transaction does that represent?

788 A. That is a shipment from the Standard Oil Company in Bangor, Michigan, consigned to the Admiral Corporation in West Chicago, Illinois. The shipment is forwarded in by Greyhound bus from Bangor to Chicago, where the City Messenger picked it up and delivered it to our place in West Chicago.

Q. Is there any particular reason for the use of Greyhound bus?

A. Bangor, Michigan, is an off-line point as far as transportation goes, and due to wanting this to be expedited service going to our plant in order to meet that production it is handled that way.

Q. Did you ever use air freight to make a shipment like that?

A. Not out of Standard Oil in Bangor, Michigan.

Q. Now I direct your attention to the bill No. 45147, dated 10/1/56, referring to the pickup at the LaSalle Street Station for delivery to the Admiral Corporation at 3815 West Armitage, and ask you what transaction is represented by that?

A. That is a shipment from the Formalite Cor-
789 poration, Marshall, Illinois, consigned to our plant here, and it is due to production changes we have to have expedited service, and it is sent in by rail to where the City Messenger picks it up and delivers it to our plant.

Q. Rail express?

A. That is right, rail express.

Q. Do you know the defendant, City Bonded Messenger & Trucking Service, Inc., in this case?

A. Yes.

Q. Have you ever done any business with them?

A. Yes, sir.

Q. Prior to September 24, 1956 did you ever do business with them?

A. It is possible. I don't know. I would have to check my file on the City Bonded first.

Q. Of your own knowledge do you recall?

A. I believe there was, yes, sir.

48. Additions to and corrections of Appellant's Appendix, pages 174-176:

TESTIMONY OF ROSE SIEGEL

810 Q. Now, referring to April, 1954, what, if anything, occurred at that approximate time concerning these parties?

A. April? There were so many things that happened in the course of a day. Do you mean in regard to the possible agreement, or the conversation?

811 Q. Well, anything that occurred that you feel is pertinent to the issues here.

A. I don't know whether it was April or prior to April. The month covered so many—

By the Court: I can't hear you.

By the Witness:

A. The month covered so many things, I don't quite know what you are trying to—

By Mr. Mullin:

Q. Was Mr. Mansfield in the office in April, 1954?

A. Yes, he was.

Q. Was he away from the office for any time during that month?

A. Yes. I believe he took a trip to New York.

Q. Do you know whom he was visiting or who he [illegible] in New York?

A. Yes. He informed us of his whereabouts because we had to know, in case we had some business conversations with him, other than relating to that trip.

Q. And where was he going?

A. To visit the office of the City Messenger of 812 Hollywood in New York City.

By Mr. Cohen: If your Honor please, I think all this testimony should be stricken. It doesn't relate to anything here and it relates to conversations that she had with Mr. Mansfield, out of the presence of the plaintiff.

By Mr. Mullin: She is just testifying as to the facts.

By the Court: Yes. The objection is overruled.

By Mr. Mullin:

Q. What if anything occurred after Mr. Mansfield returned from New York?

A. Well, he — I don't know what he accomplished in New York between —.

By the Court: I can't hear you.

By the Witness:

A. I don't know what he accomplished in New York between the plaintiff — I wasn't there — but we knew there was going to be some agreement between the defendant and the plaintiff concerning the City Messenger air forwarding.

By Mr. Mullin:

Q. How did you know that?

813 By Mr. Cohen: I move that that answer be stricken.

By the Court: Strike it out.

By Mr. Mullin:

Q. I am asking you what occurred in the office after he returned. Just tell us facts.

A. I don't know, sir. There was no definite conversation that I could remember.

Q. I am not talking about conversation.

Well, tell me this: Were there any preparations made for any new type of business?

By Mr. Cohen: Objection. Counsel is leading his witness.

By the Court: That is so. Evidently her recollection is exhausted or she doesn't know.

Was there?

By the Witness: Yes, there was.

By the Court: Well, tell us about it.

By the Witness: He explained the operation —

By the Court: Who?

By the Witness: Mr. Mansfield of City Bonded Messenger explained the operation that we were going to into and —

814 By the Court: What did he say?

By the Witness: He explained the pickups and deliveries that we would handle from the airport and part of the new division that we were going to go into.

By Mr. Mullin:

Q. Do you recall anything further being done?

A. In that month?

Q. Well, any time after he returned from New York?

A. Well, I know there were the printed matter that we ordered and he filled out a sample form for us to follow and instructed us as to the way to handle it and write it up and how to — when the calls were to come in, how we were to handle them from then on, and the pickups and the deliveries on the other end, and how to contact the different agencies that they had set up, to continue with the on deliveries.

Q. Now you referred to some printed forms.

Do you know from whom these printed forms were ordered?

A. Yes, I do.

Q. From whom were they ordered?

A. Uarco.

815 Q. Do you know the name or the title of these printed forms?

A. City Messenger Air—

Q. No.

A. Oh—CMAX. We call them CMAX.

Q. Did the form have any particular name on it? What was it called? How did you refer to it?

A. CMAX air bill.

Q. An air bill?

A. Yes.

Q. I show you Plaintiff's Exhibit—

By Mr. Cohen: 1.

By Mr. Mullin:

Q. Plaintiff's Exhibit 1, and ask you if that is the form that you are referring to.

A. Yes. It looks like it. Yes, I would say it is.

Q. Now, what if any part did you play in the preparation of the forms?

A. In the preparation of them?

Q. Yes.

A. I did not prepare them. I wrote on them, placing orders on them, but I did not help prepare the form itself, so far as the printing.

816 Q. Did you see the copy before this was printed?

A. No, I did not.

817 Q. Now, you testified that you were bookkeeper for the defendant.

Do you know the volume of business that is transacted by City Bonded Messenger, the defendant in this case?

By Mr. Cohen: Objection. That has no relationship to the issues here.

By the Court: Overruled.

By the Witness:

A. The City Bonded Messenger Service?

By Mr. Mullin:

Q. Yes.

A. Yes. It varies from month to month. We have peak months and slow months.

Q. And what is it during a peak month?

A. At that time, $35,000.

By the Court: What time do you mean?

By the Witness: Covering this case.

By the Court: Well, place a time, so I know what you are talking about.

By the Witness: 1954.

By Mr. Mullin:

Q And, during a time other than a peak month?

818 A. About thirty thousand.

Q. About thirty thousand?

A. Yes.

By the Court: When is that? Place a time on it so we know.

By the Witness: Well, you see, certain times of the year, like Christmas and Thanksgiving —

By the Court: I want to know whether you are talking about 1944 or 1956.

By the Witness: 1954, sir.

By the Court: All right, 1954.

What was it in 1956, do you know?

By the Witness: I don't know in 1956. I was not bookkeeper at the time — just until 1955. I took a leave of absence in 1955.

By Mr. Mullin:

Q. Do you know what it was in 1955?

A. In 1955, I would say about thirty-three thousand, thirty-five thousand.

Q. And that is during a peak month?

A. Thirty-five thousand, sometimes more. It is a matter of two or three on each side.

Q. Do you know whether the defendants handle any business for Emery Air Freight Forwarders, whether
819 they handle any business for them?

A. At the present time?

Q. At the present time.

A. Yes, sir.

Q. Do you know when they first began to do business for Emery Air Freight?

A. I don't recall the exact date they started to do business with Emery Air Freight.

Q. You don't recall the exact date?

A. No, I don't.

Q. Would you recall the approximate date?

A. It was some time in 1955.

Q. Some time in 1955?

A. Yes.

Q. Do you recall whether Mr. Mansfield had any dealings with any of the officials of Emery Air Freight in your office?

A. I didn't witness any meetings. All the contact I ever had was phone calls.

Q. Phone calls?

A. That is right, sir.

Q. Were there any phone calls?

A. Yes, I answered a couple.

820 Q. You answered the phone calls?

A. Yes, I did.

Q. And these phone calls were from whom to whom?

A. From some representative from Emery Air Freight. They asked — Mr. Mansfield wasn't in the office at the time and I answered the phone and they asked me if I could quote rates and I told them Mr. Mansfield would be the one to do that, and they left a phone number.

I don't recall the gentleman's name, though, that answered.

Q. What date was that?

By Mr. Cohen: I am sorry, but I can't hear.

By Mr. Mullin:

Q. Will you speak up, please?

A. That was in the spring of 1955.

Q. The spring of 1955?

A. Yes, the early part of 1955.

Q. Do you recall any conversations prior to that, or any phone calls?

A. With Emery Air Freight?

Q. Yes.

A. No. The one I am thinking of was in the early part of 1955. It was warm weather.

821 I would like to correct that statement. I think it was 1954.

Q. It was the spring of 1954?

A. I think so, sir.

822 By Mr. Mullin:

Q. Well, can you search your recollection now and make certain whether it was 1954 or 1955?

A. It was '54.

49. Additions to and corrections of Appellant's Appendix, page 177:

827 A. As was said before, Mr. Mansfield of City Bonded Messenger Service was severing his connections with them, and he asked Mr. Sidney Fullman about paying the bill, and Mr. Sidney Fullman said he didn't like the way the bill was presented, that he would like us to itemize that and put all items on a big sheet, and we don't ordinarily do that in our bookkeeping department, but he proceeded to show us how he wanted it, and it took me six weeks to set it up.

Q. Did you set it up?

A. Yes, it was three months' work and I did it in
828 six weeks.

The Telephone Company had to be called, and they gave me an itemized list of every telephone call, and whether it was collect or not, and where, and we presented it.

Q. Was that presented to the Fullmans?

A. Yes, I believe so.

Q. Do you remember the date it was presented to them?

A. I started working on that. That was about the 6th, and it took me about three weeks thereafter to work on it. He helped me with a few, to show me how to set it up, but an argument happened between Miss Lombard and Mr. Sidney Fullman because he questioned every item that was put on the draft, and there was six months, and sometimes as many as 20 or 25 calls a day, and each one of the calls would have maybe ten to twelve entries, and each one was questioned, and at that rate I thought I would never finish it.

Q. What was represented on this big sheet, do you recall?

A. Yes.

By Mr. Cohen: Objection. She has already testified as to what was on the sheet.

829 By Mr. Mullin: I don't think so.

By Mr. Cohen: Yes, she has.

By the Court: What is your objection?

By Mr. Cohen: That she has already testified.

By the Court: No, she hasn't.

Is there anything else you can tell us about?

By the Witness: On this draft we listed — could I give you an example?

By Mr. Mullin: Yes, you go ahead.

50. Additions to and corrections of Appellant's Appendix, page 179:

833 By Mr. Cohen: If your Honor please, I will plead this matter has been decided in that case, and I certainly think it is imposing upon this Court and confusing all the issues to have any material that is concerned in that matter heard in this case.

By the Court: Your opponent just told me it has [not] been settled. Overruled.

By Mr. Cohen: It has been settled.

By the Court: Overruled.

• • •

51. Additions to and corrections of Appellant's Appendix, pages 179-180:

• • •

834 Q. You say the original was tendered to the plaintiff, the original of this accounting sheet, is that true?

A. As far as I know, yes.

Q. Do you have a copy or do the defendants have a copy of that?

A. Yes. You mean the large graph sheet, or are you referring to each order?

By Mr. Cohen: We never received anything of that nature.

By Mr. Mullin: She has testified.

By Mr. Cohen: She has testified, but we have never received any.

By Mr. Mullin: Your Honor, during the prelim-
835 inary status of this lawsuit we presented a motion for production of certain documents. Some of the documents were produced. This was before Mr. Cohen was in the case. Others were not produced.

836 Rather than delay the trial of the issues here, we went ahead without waiting for production of those

documents. I would like to move now that this document be produced, this work sheet that was furnished to the plaintiff.

By Mr. Cohen: If you Honor please, I find in my record no order upon us to produce the graph sheet that this witness has testified to.

By the Court: Well, I will make one. Produce it.

By Mr. Cohen: Well, let me advise the Court that my clients advise me none was ever tendered to them, and therefore they do not have one.

* * *

52. Additions to and corrections of Appellant's Appendix, page 187:

TESTIMONY OF WILLARD GILBERT

864 * * Q. You say you are familiar with the accounts. Are you familiar with the account of Emery Air Freight?

A. Yes, sir, I am.

Q. Can you tell us something about that account?

A. Well, on the Emery Air Freight—

By Mr. Cohen: Well, if your Honor please, I am going to object. The question of Emery Air Freight is not a question here before the Court.

By Mr. Mullin: We are trying to prove the damages here.

By the Court: The objection is overruled.

* * *

53. Additions to and corrections of Appellant's Appendix, page 189:

* * *

869 * * By Mr. Mullin: The defendants rest, your Honor. At this time, though, I would like to make a motion to be permitted to amend our complaint and counterclaims to conform with the proofs here.

* * *

870 By the Court: What do you have in mind?

By Mr. Mullin: I think we have made out a case of breach of contract. We have a count for fraud and deceit but not for breach of contract and I would like to put in such count.

By the Court: You may have leave.

By Mr. Mullin: Thank you, your Honor.

By the Court: When will you do that?

By Mr. Mullin: I will have that tomorrow.

And Thereupon The Defendants Rested Their Case.

* * *

54. Additions to and corrections of Appellant's Appendix, pages 196-197:

TESTIMONY OF IRVING MANSFIELD

910 By Mr. Mullin:

Q. Mr. Mansfield, you will recall that the rebuttal evidence included the testimony of Mr. Ben Fullman and two letters dated 12/29/54, that is, one, and the other was dated January 6th. The one dated 12/29/54 was addressed to "Dear Ben" and signed "Yours, Irving."

I will show you Defendants' Exhibits 53, 54, 55, 56 and 57 and ask you what they are and the circumstances surrounding or explaining that evidence.

A. Yes, I will explain this.

By Mr. Cohen: Objection, if your Honor please. The instruments will speak for themselves.

By Mr. Mullin: We are not asking him as to the contents of the instruments. We are asking him to explain the circumstances surrounding them.

By the Court: Overruled.

911 By the Witness:

A. I have a check in my hand dated December 27, 1955, made out to the American Air Lines for $239.91. It represents a trip I took to Los Angeles to see the Rose Bowl game in 1955.

By Mr. Mullin:

Q. That is Defendants' Exhibit 55 for identification?

A. I think that is what it is marked.

Q. What is the endorsement on the back?

A. The American Air Lines' endorsement, with my ticket number and my address, 5210 Blackstone, and my telephone number. This evidently is what I was confused with when I said I was out in Los Angeles in 1954. It was in '56, and evidently when talking to my brother we were confused as to this being the date of 1954. In reality it was 1955.

By Mr. Cohen: Your Honor, I will object.

By Mr. Mullin:

Q. You are referring to the Rose Bowl game?

A. Yes.

Q. Which took place when?

A. In January, 1956, and I left the following day.

912 By Mr. Cohen: If your Honor please, I object to this line of questioning. Counsel said he was going to come forth and produce evidence of the December 29th date. This December 27, 1955 is wholly without the scope of this trial.

By the Court: Overruled.

By the Witness: Shall I continue?

By Mr. Mullin:

Q. Yes.

A. (Continuing) This is a check dated October 14, 1954, made out to the United Air Lines for $239.91, and represents a round trip to Los Angeles. They have their endorsement on the back of it, "United Air Lines" with flight 731 to Los Angeles on the 15th of October, 1954. That is the time that we were confused with the time I was out there in Los Angeles and visited Ben at his office and heard the tape recording.

Here is a charge from the Diners' Club or charge from the Ambassador Hotel, October 17, 1954, for $54.00. This is a charge for the House of Murphy in Los Angeles, 913 and another for the Barclay also in Los Angeles, dated 1954.

Q. What month?

A. October, and the first part of November.

This is a check dated in October, 1954, that I made out to myself for $500.00 for this trip, and it was cashed by my brother, and it bears the stamp of the Bank of Los Angeles and the Federal Reserve.

I couldn't find the plane ticket, and so I called up the United Air Lines and gave them the endorsement of the check in October, and this is their letter to me, "Mr. Mansfield, City Messenger Service."

By Mr. Cohen: Your Honor, I will object to this.

By the Court: Sustained.

By Mr. Mullin:

Q. Now, to the best of your recollection will you tell us the date of the second meeting with Ben Fullman at which time you and your brother heard this tape recording you testified to?

A. It would have to be subsequent to October 15th to around November 1 when I was there.

By the Court: You were in error when you placed 914 it at the end of December or first of January?

By the Witness: I was, your Honor, sir.

By Mr. Mullin: That is all, your Honor.

By the Court: Anything else? Any cross?

By Mr. Mullin I will offer these into evidence.

By the Court: They may be received.

By Mr. Cohen: If your Honor please, I will object to the entry of Defendants' Exhibit 53, which purports to be a letter from the United Air Lines.

By the Court: Sustained.

By Mr. Cohen: If your Honor please, I will object to the entry of Defendants' Exhibit 55, which purports to be a check dated December 27, 1955.

By Mr. Mullin: That was offered to show how—

By the Court: Overruled. Exhibits other than the letter may be received.

• • •

City MESSENGER OF HOLLYWOOD
HOllywood 4-1188
1314 COLE PLACE • HOLLYWOOD 28, CALIFORNIA

203 East 36th Street.
New York 16, N. Y.

OFFICES
LOS ANGELES
HOLLYWOOD
BEVERLY HILLS
WILSHIRE & WESTERN
WILSHIRE & FAIRFAX
WEST HOLLYWOOD

Dear Irving:-

I have been quite busy attending the the numerous deteils involving the setting up of City Messenger Air Express, but I am hoping to get under way by March 1st. Here is some information I have gathered which is very interesting regarding Air expresss and freight matter handled by Emery Air freight on Oct. 18, 1953 out of Chicago. 59 shipments were shipped out of Chicago having a gross weight of 7690 lbs or an average of 131 lbs each, at the same time 46 shipments were sent to Chicago from NY weighing 3012 lbs for an average of 65 lbs each, and 2 from Los Angeles. which shows that 124 shipments were handled by the Chicago office of Emery from NY and Chicago only. The amount of shipments into Chicago are much greater if you take into consideration the amount of shipment from other cities in various parts of the US, that we eventually will operate from. Have you been doing any preliminary surveys of potential shipments that you can get in Chicago or suburbs? (remember that you can also accept shipments from Indiana or Wisconsin. By the way I am going to arrange with some agent In Miwaukee to accept shipments for delivery to points on our schedule, and have them trucked into Chicago for transhipping. We can pickup shipments any place, (meaning you) as long as part of the movement is by air) Therefor you should have no fear in stepping on the toes of Ill commerce Com.

Note:- Call the office of the various Air Forwarding companies, and get copies of some of the advertising matter they are using in Chicago, also copies of their "Memo tariffs". Forward them to me at your earliest time.

Dont give too much worry about the shipping and consolidating of shipments from Chicago, as I am making up for you a set of Standard operating proceedures, that you will use, I will show your dispatchers how they are to be used, checking airline schedules, and other tricks of the trade that will make the operation profitable for all comcerned.

NOTE:- Please contact the telephone company and have them install a T W X--Teletype machine. This will be absolutley necessary in the operations of your office. Dont delay on this as you will need it as soon as you start operating. We now havemachines in Los Angeles #. 1245 and in NY 1-4165

FILED
MAY 9 - 1957
AT ___ O'CLOCK
ROY H. JOHNSON, CLERK
On the Spot ● On the Dot

Irving Mansfield--page 2

PICKUP ORDERS SNAP OUT FORMS:- Have you got any bids on the pickup orders. If you have checked the prices and they cant be bettered let mw know how many you want? As we are running short of them and we must order. The same for the CUSTOMER BOOKS. The tickets will be the same as per smple, except local phone numbers will be out. Your phone number will appear on the cover. check thos'e prices I left on the books, and let me know how many you want, as we must order on those also.

Have you given any more thought about the method of operational charges for the Air express. I have expressed my thoughts to you on the subject and I would like to know what you would like to do. I have a lot of faith in you, and I am sure that you and I can work to-gether. This Air express deal has a tremendous future. I will give you an example, I attended a hearing of the C.A.B. in Washington DC after I left you, and Mr. Emery of Emery Air Freight testified that his business gross in 1953 was 5½ million dollars, and that his gross for 1954 should be over 6 million dollars. This is a lot of business without a big investment in fixed equipment. There is competition in every line of business, but this is a type of business that every one cant get intc without authority from the C.A.B. This take time-money-effort and reputation. Before one can give you competition he has to go through all the things we went through, plus the fact their competition mustbe open and above board. We have the nucleous with offices in NY-LA-and Chicago. From there on all we have to do is appoint agents in various cities we want to operate from.

I suggest that you mimeo a bunch of the letters that I sent a sample of from Los Angeles office, "TRANSCONTINENTAL STAR SPECIAL AIR EXPRESS." and use them as stuffers in all your bills on the first of the month. Sid claims that he received a bunch of inquiries. This letter will be very useful. If you do this immediatly you can send them out ahead of time, and enclose another copy with the billing. If you have inquiries, quote them rates from the "Specific commodity" tariff, as a sample, if the comodity fits into the catagory. WARNING:- do not accept shipments ahead of time, as we will get into untold trouble

Let me hear from you soon.

Sincerely, Ben

P.S. Thank Nadine for hospitatlity, although I only slept there for a few hours, I sure appreciated her early morning coffee at 5.30 a.m. she is a wonderful girl.

NEW YORK
CHICAGO
LOS ANGELES
HOLLYWOOD
BEVERLY HILLS

City MESSENGER

CITY MESSENGER

DATE 4/3/57

802204

Total Miles | Call No.

SUMMARY OF CHARGES

Cust. ALTSCHUL PRODUCTIONS

Address 2461 W. Peterson
Chicago 45

Messenger No. 2 | Rush Special | Regular | Deferred | Route | B C T

Waiting Time: | OK'ed By

Pick Up From:

Address

Deliver To: WARDS

Address W. CHICAGO AVE
DOWNTOWN 5th fl. Retail

Special Instructions
40#

Received By: A. Merrill

C. O. D.

Messenger Serv.		
Nite ☐ Sun. ☐ Hol. ☐		
Car ☐ Truck ☐		
EXTRA CHARGES		
Waiting Time		
Advances		
Fed. Transportation TAX 3%		
TOTAL CHARGES		

07724

• Denotes Minimum Charge

146 *Defendants' Exhibit 4*

INTER-HOUSE CORRESPONDENCE

USE THIS FORM FOR ALL HOUSE CORRESPONDENCE — WRITE ON ONE SIDE OF PAPER ONLY

Date July 8, 1954

To Irving Mansfield *From* Ben Fullman

Subject: Books for NY and LA

I have lookedover the prospective cover for the receipt books, and find them in order. Be sure that the copy is as I sent you. The Los Angeles covers must have the correct phones, and the New York books the New York phones. To be sure a thorough check should be made of a proof. The cut of the plane circling the globe looks familiar. It looks like some copy we now have in the Queens Long Island directory.

We received several comments from the trade on the Recordak Ad in News Week. I am trying to get the boys to work up some kind of a tie in on this ad. Do you have anything in view. We should be able to cash in on it some way. This ad is also to appear in U S News---Business Week and Fortune Mag.

Your brochure is very clever. It should draw attention. Of course this alone will not bring in business. It is good institutional matter. One must still use other methods of selling to bring in business.

I talked to the boys, and they are sending me from New york the highlights of your conference with them. I will look it over carefully and start matters rolling on this end.

We have put a saleman on the outside here to spend his time exclusivly on CMAX. Sales will start picking up on this end I am sure immediatly. We have not had many inquiries to Chicago as yet, but have had many shipments to Louisville, Cincinatti, Indianapolis. You can rest assured that you will be receving more than your share as soon as we can get our sales program rolling. In September we are going to put on a second salesman. As soon as we can get LA rolling good I am going to get a saleman and an agent started in SF and Oakland bay area district. We now have a delivery agent there. The arrangement of a sales agent and salesman requires some porsonal time of my own, that I cannot spare at present. Of course finances is part of the reason, that is why we must go along slow.

I have a lot of faith in this Air Express project, and the only thing that can hold it back, will be capital. As the boys explained to me, you have contact with such capital. I am sure that as a group we can work to-gether and make a huge success of this project. There is one thing that you can be sure of, and that is, it is not a one man business, and does not require the absolute attention to an individual in priceing waybills, making up drivers commision logs. We are not doing business with 1 and 2 dollar items. The individual units are from 5 to 50 dollars. With an average of better than $20.00. People will squable of pennies when they want a local delivery, and will spend many dollars when it requires shipment by air. The competition is rugged, but at the same time you know your competition, and an individual cannot start in business and nip at your heels.

Get these books rolling, as we need them also.

Regards to Nadine Sincerely yours,

FILED
55C575
MAY 9 - 1957
AT ..... O'CLOCK
ROY H. JOHNSON, CLERK

Plaintiff's Exhibit Defendant's Exhibit Rec'd
in the District Court of the United States, Northern District of Illinois, Eastern Div. PARTNER, J.
vs.
Roy E. Feller - Official Court Reporter

PUT IT IN WRITING WRITTEN MESSAGES SAVE TIME AND AVOID ERRORS

BLACK CAT FORM 316

Plaintiffs
Exhibit
Defendants
Exhibit 1 ( ) Identified
( ) Received
District Court of the United States. BEFORE
District of Illinois, Eastern Division RICHER J.
Amy F. Fuller - Official Court Reporter

FILED
MAY 9 - 1957 55C575
AT ..... O'CLOCK
ROY H. JOHNSON, CLERK

CLASS OF SERVICE

This is a full-rate Telegram or Cablegram unless its deferred character is indicated by a suitable symbol above or preceding the address.

WESTERN UNION

W. P. MARSHALL, PRESIDENT

FX-1201

SYMBOLS

DL = Day Letter
NL = Night Letter
LT = Int'l Letter Telegram
VLT = Int'l Victory Ltr.

The filing time shown in the date line on telegrams and day letters is STANDARD TIME at point of origin. Time of receipt is STANDARD TIME at point of destination

CTB003 DEA072 NOA726 LH581

1957 MAY 10 AM 1 12

L=LLU470 NL PD=WUX TDL HOLLYWOOD CALIF 17=

IRVING MANSFIELD, CITY BONDED MESSENGER=

ML 193 NORTH LA SALLE CHGO=

C.A.B. REGISTRATION APPROVED AND ISSUED TO CITY MESSENGER AIR EXPRESS EFFECTIVE MAY 22 1954. IMPERATIVE RUSH BE PUT ON PRINTING OF WAY BILLS. CONTACT UARCO. HOLD THEM TO PROMISE OF PUTTING RUSH ON THIS ORDER. COPY OF NEW TARRIF WILL BE MAILED YOU IN FEW DAYS=

CITY MESSENGER SERVICE BEN FULLMAN=

THE COMPANY WILL APPRECIATE SUGGESTIONS FROM ITS PATRONS CONCERNING ITS SERVICE

DEFENDANTS' EXHIBIT "7"

UNITED AIR LINES

United Air Lines Building, Chicago 38, Illinois

EXECUTIVE OFFICES

August 23, 1954

Plaintiffs Exhibit / Defendants Exhibit / ( ) Identified ( ) Rec'd
In the District Court of the United States, Northern District of Illinois, Eastern Division
BEFORE
Entered ... Deputy

City Bonded Messenger & Truck Service
193 N. La Salle Street
Chicago, Illinois

Attention: Mr. Irving Mansfield

Gentlemen:

Just recently you agreed to guarantee credit charges for the City Messenger Service of Hollywood dba City Messenger Air Express. To confirm this arrangement, we will appreciate your writing us the following letter signed by an officer of your company:

"United Air Lines, Inc.
5959 S. Cicero Avenue
Chicago 38, Illinois

Attention: Mr. C. H. Cuny,
Credit Manager

Gentlemen:

FILED
5 SC 5-75
MAY 9 - 1957
AT ..... O'CLOCK
ROY H. JOHNSON, CLERK

The City Bonded Messenger & Truck Service incorporated under the laws of the state of guarantees all charges as accrued by the City Messenger Service of Hollywood dba City Messenger Air Express incorporated under the laws of the state of .

City Bonded Messenger & Truck Service agrees to make reimbursement to United Air Lines for charges unpaid by City Messenger Service of Hollywood. United Air Lines agrees to notify City Bonded Messenger and Truck Service at any time a charge is more than sixty days past due at which time reimbursement will be made.

Very truly yours,

CITY BONDED MESSENGER & TRUCK SERVICE

Date
Witness

City Bonded Messenger & Truck Service - 2 August 23, 1954

This guarantee will be adequate for our records.

Very truly yours,

C. H. Cuny
Credit Manager

CHC:abk

150 *Defendants' Exhibit 13 (p. 1)*

Form Ill. C.C. 5-454 (Revised)

File No. 16337 PC

Do not fill in

BEFORE THE ILLINOIS COMMERCE COMMISSION

APPLICATION UNDER THE ILLINOIS MOTOR CARRIER OF PROPERTY ACT

(Read Instructions Following Before Answering)

519-19

I. Application of City Messenger of Hollywood, Inc.
(Name)

D/B/A City Messenger Air Express
(Trade or operating name of applicant)

A corporation organized pursuant

to the laws of the state of California

(see attached for list

of directors and officers--Ex-1)

(State whether an individual, partnership, corporation, association, fiduciary, or other legal entity. If a partnership, give names of all partners. Give name of State in which incorporated if a corporation, and the names and addresses of all directors and officers if a corporation or association.)

ILLINOIS COMMERCE COMMISSION
DEC 8 1956
MOTOR CARRIER OF PROPERTY, DIV.

whose business address is 845 So. Wabash Ave, Chicago, Illinois
(Street) (City) (State)

II. Appropriate authority is applied for to:

_____ continue an operation instituted on *_____; X institute a new operation;

_____ extend an existing operation; _____ change an operation; _____ engage in dual operation.

(Place X in appropriate space to indicate applicable phrase or phrases. If authority is sought to continue an operation, attach an abstract from applicant's records to show actual shipments on and after the date the operation was instituted.* If traffic was interchanged, give only the points at which applicant effected such interchange. Such abstract should show: Date, origin, point, destination point and the commodity*) as a common carrier by motor vehicle, in intrastate
(Common or Contract carrier)

commerce, over irregular routes, in the transportation of
(Regular or Irregular)

General commodities, except commodities in bulk
or those commodities which require special equipment.

(If general commodities, so state, and name exceptions. If any, if specific commodities, name them.)

from Chicago, Illinois and a radius of 50 Miles of and the air
~~between~~ ~~and~~ ~~and~~ ~~and~~ ~~as~~
~~follows~~ ports of Chicago area namely:

The Chicago Midway Airport
62 nd Cicero Ave.
and
The O'Hare International Field
Park Ridge, Illinois

MOTOR CARRIER
NOV 29 1956
OF PROPERTY DIV.

(Give detailed description of routes or territories)

* Applies to continuance on a permanent basis of a present operation by virtue of a grant of temporary authority.

J.M.

EXHIBIT IN QUESTION

DIRECTORS AND OFFICERS
OF APPLICANT CORPORATION

DIRECTORS:

SIDNEY B. FULLMAN	1414 Cole Pl. Hollywood Calif.
ELLIOT S. FULLMAN	203 E. 36th St. New York 16, N. Y.
NORVIN FULLMAN	845 So. Wabash Ave. Chicago, Illinois

OFFICERS:

SIDNEY B. FULLMAN	PRESIDENT
ELLIOT S. FULLMAN	VICE PRESIDENT
NORVIN FULLMAN	SECRETARY-TREASURER

MOTOR CARRIER
NOV 29 1956
OS PROPERTY DIV.
503

III. It is proposed to serve the following intermediate and/or off-route points: _____

50 mile radius of Chicago

air ports

(Intermediate points applies only to regular-route operations)

(Off-route points applies only to regular-route operations of property carriers)

IV. On return trips applicant proposes to:

_____ transport only empty containers or other such incidental facilities used in transporting the commodities specified in this application; _____ furnish no transportation for compensation; _____ transport other commodities, namely:

V. The proposed operation will be: X year-around or _____ seasonal between _____ (Day and month)

approximately _____ (Number) times each _____ (Day, week, month or year); _____ on schedule, _____

not on schedule, _____ on call.

VI. Applicant proposes to use approximately six (6) (Number) motor vehicles in the proposed service described above, of the kind and type described in appendix "A" hereto attached.

VII. A financial statement, showing in detail applicant's current financial condition, is attached hereto as appendix "B".

VIII. The extent, if any, to which applicant is directly or indirectly affiliated with, controlled by or under common control or management with any other carrier subject to The Illinois Motor Carrier of Property Act and/or Interstate Commerce Act, is as follows:

None

(If not applicable, so state. If applicable, give complete details)

IX. A map of the proposed operation, showing also the pertinent portions of applicant's present authority, if any, is attached hereto as Appendix "C".

X. The complete authority, if any, heretofore issued to applicant by the Commission, both as to traffic and routes or territory involved, is reflected by Appendix "D" attached hereto. If none, so state none.

XI. Applicant will introduce approximately 3 (Number) witnesses at the hearing and will require approximately 3 (Number) hours to present evidence.

XII. Applicant understands that the filing of this application does not, in itself, constitute authority to operate.

XIII. (To be filled in if applicant is a non-resident individual, partnership or corporation. See instruction Number 6.) Name and address of designated resident agent in the State of Illinois for services under provisions of Section 24 of the Illinois Motor Carrier of Property Act is designated as follows:

Harry Shane (Name of designated agent)

845 So. Wabash Chicago, Ill. (Address of designated agent)

Name and address of applicant's attorney, if applicant represented by attorney

Alfred L. Roth

188 W. Randolph St.

Chicago, Illinois

City Messenger of Hollywood, Inc. D/B/A City Messengers Air Express

By _____ (Applicant)

sec't. and trea.

OATH

STATE OF Illinois }
County of Cook } ss

I, Norvin E. Fullman, being first duly sworn, depose and say: That I am the sec't. and treasurer of the City Messenger of Hollywood Inc., applicant herein; that I have read the foregoing application and know the contents thereof; and that the contents of the foregoing application are true and correct.

(Title—such as President, partner, owner, etc.) (Name of Applicant)

Norvin E. Fullman
(Signature of Individual) sec't. and treasurer

Subscribed and sworn to before me, a Notary Public, in and for the State and County above named this 31st day of October, 1956.

(SEAL)
My Commission expires June 16, 1958

Alfred L Roth
(Notary Public)

OATH

STATE OF
County of } ss

I, _____, being first duly sworn, depose and say: That I am the _____ of the _____, applicant herein; that I have read the foregoing application and know the contents thereof; and that the contents of the foregoing application are true and correct.

(Title—such as President, partner, owner, etc.) (Name of Applicant)

_____
(Signature of Individual)

Subscribed and sworn to before me, a Notary Public, in and for the State and County above named this _____ day of _____, 195_____.

(SEAL)
My Commission expires _____

_____
(Notary Public)

OATH

STATE OF
County of } ss

I, _____, being first duly sworn, depose and say: That I am the _____ of the _____, applicant herein; that I have read the foregoing application and know the contents thereof; and that the contents of the foregoing application are true and correct.

(Title—such as President, partner, owner, etc.) (Name of Applicant)

_____
(Signature of Individual)

Subscribed and sworn to before me, a Notary Public, in and for the State and County above named this _____ day of _____, 195_____.

(SEAL)
My Commission expires _____

_____
(Notary Public)

OATH

STATE OF
County of } ss

I, _____, being first duly sworn, depose and say: That I am the _____ of the _____, applicant herein; that I have read the foregoing application and know the contents thereof; and that the contents of the foregoing application are true and correct.

(Title—such as President, partner, owner, etc.) (Name of Applicant)

_____
(Signature of Individual)

Subscribed and sworn to before me, a Notary Public, in and for the State and County above named this _____ day of _____, 195_____.

(SEAL)
My Commission expires _____

MOTOR CARRIER
NOV 29 1956
OF PROPERTY DIV.

_____
(Notary Public)

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

C E R T I F I C A T E

Re: 16379-MC

I, FREDERICK B. RESAG, do hereby certify that I am Secretary of the Illinois Commerce Commission of the State of Illinois and keeper of the records of said Commission.

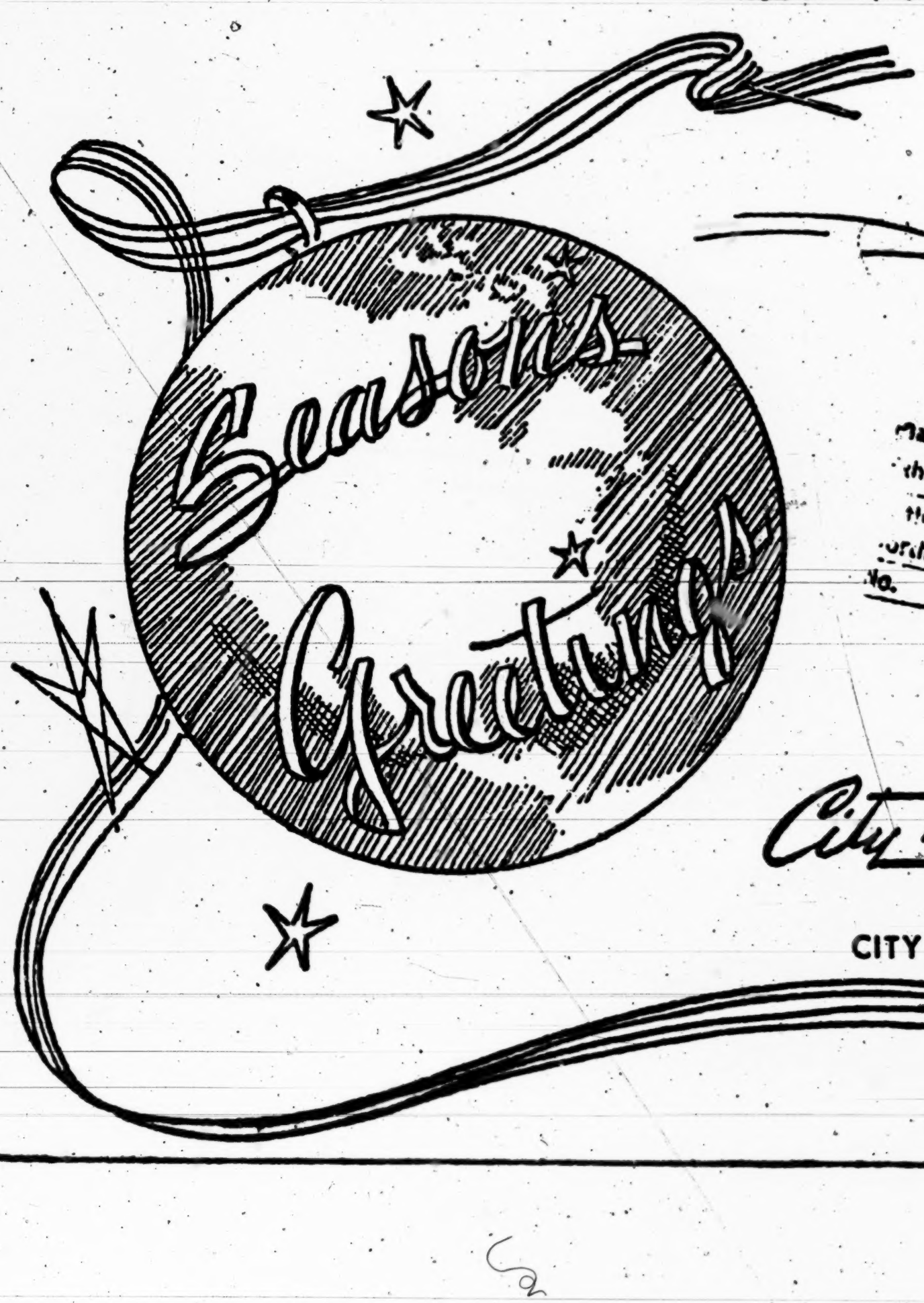
I further certify that the above and foregoing is a true, correct and complete ~~copy of~~ photostatic copy of Application, Exhibit to Question I (2 pages) and Oath on file with this Commission in the above-entitled cause.

Given under my hand and the seal of said Illinois Commerce Commission at Chicago, Illinois, this 21st day of February, 1957.

Frederick B. Resag

FREDERICK B. RESAG

Secretary



FILED
55057
MAY 9 - 1957
O'CLOCK
SON, CLERK

Plaintiffs
Exhibit

Defendants
Exhibit ( ) - 14 Identification
( ) Rec'd

In the District Court of the United States,
Northern District of Illinois, Eastern Division
No.

BEFORE
BARNES, J.

Roy E. Fuller - Official Court Reporter

City MESSENGER AIR EXPRESS

DIVISION OF

CITY BONDED MESSENGER SERVICE

156 *Defendants' Exhibit 47*

SILVERMAN & MULLIN
ATTORNEYS AT LAW
PATENT & TRADE MARK CAUSES
105 W. ADAMS ST
CHICAGO

United States Patent Office

609,732

Registered July 26, 1955

PRINCIPAL REGISTER
Service Mark

Ser. No. 680,867, filed Feb. 1, 1955

Plaintiff's Exhibit — Defendants Exhibit 47 — Rec'd
In the District Court of the United States
Northern District of Illinois, Eastern Div.
No. —
Roy F. Fuller - Official Court Reporter
BEFORE RAPHFR

City BONDED

City Bonded Messenger & Trucking Service, Inc. (Illinois corporation)
193 La Salle St.
Chicago, Ill.

For: MESSENGER DELIVERY SERVICE; SPECIAL DELIVERY OF VARIOUS COMMODITIES—NAMELY, NEWS RELEASES, ADVERTISING COPY, AIR LINE AND RAILROAD TICKETS, RADIO TRANSCRIPTIONS, GRAPHIC ART INDUSTRIES, SAMPLES, AIR FREIGHT, DISPLAYS AND BLOWUPS; DRAYAGE AND GENERAL TRUCKING, HAULING AND MOVING—in CLASS 105.

First used September 1942, and in commerce September 1942.

The word "Bonded" is disclaimed apart from the mark as shown.

55 C 575

FILED
MAY 9 - 1957
AT ..... O'CLOCK
ROY H. JOHNSON, CLERK

Certificate Number 28584

STATE OF ILLINOIS

OFFICE OF THE SECRETARY OF STATE

Plaintiff's Exhibit — Defendant's Exhibit 48 (1-5 Idtfd.) ( ) Rec'd
In the District Court of the United States, Northern District of Illinois, Eastern Division — BEFORE RAPNER, J.
No.
Roy E. Fulle, Official Court Reporter

To all to whom these Presents Shall Come, Greeting:

I, CHARLES F. CARPENTIER, *Secretary of State of the State of Illinois, do hereby certify that the following and hereto attached is a true photostatic copy of* the Certificate of Authority of CITY MESSENGER OF HOLLYWOOD (INC.), filed February 4, 1955.

FILED 55 C 575

MAY 9 - 1957

AT ..... O'CLOCK .....
ROY H. JOHNSON, CLERK

the original of which is now on file and a matter of record in this office.

In Testimony Whereof, *I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois. Done at the City of Springfield this* 25th *day of* February *AD 19* 57

Charles F. Carpentier
SECRETARY OF STATE

Certificate Number 1925

STATE OF ILLINOIS

OFFICE OF THE SECRETARY OF STATE

To all to whom these Presents Shall Come, Greeting:

Whereas,

CITY MESSENGER OF HOLLYWOOD (INC.)

incorporated under the laws of the State of California

has filed in the Office of the Secretary of State duly authenticated evidence of its incorporation and an application for Certificate of Authority to transact business in this State, as provided by "THE BUSINESS CORPORATION ACT" *of Illinois, in force July 13, A. D. 1933.*

Now Therefore, I, CHARLES F. CARPENTIER, *Secretary of State of the State of Illinois, by virtue of the powers and duties vested in me by law, do hereby issue this Certificate of Authority and attach thereto a copy of the application of the aforesaid corporation.*

In Testimony Whereof, *I hereunto set my hand and cause to be affixed the Great Seal of the State of Illinois.*

Done at the City of Springfield this 4th *day of* February *A.D.* 1955 *and of the Independence of the United States the one hundred and* 79th

(SEAL)

Charles F. Carpentier

SECRETARY OF STATE

Date Paid 2-4-55
License Fee $ .84
Franchise Tax $ 15.—
Filing Fee $ 20.—
Penalty $ 3.90
Clerk YC 39.74

Form J
(FILE IN DUPLICATE)

APPLICATION FOR CERTIFICATE OF AUTHORITY OF FOREIGN CORPORATION

Chicago, Illinois
January 31, 1955

To CHARLES F. CARPENTIER, Secretary of State, Springfield, Illinois: 174 45

CITY MESSENGER OF HOLLYWOOD (INC.), a corporation organized and existing under and by virtue of the laws of the State of California, hereby makes application for a certificate of authority to transact business in the State of Illinois and submits the following application pursuant to "The Business Corporation Act," of Illinois:

First—The above corporation was duly incorporated under the laws of the State of California on the 19th day of February, A.D. 19 51, for a term of perpetual years.

Second—The location of the principal office as designated in the charter is 6512 Selma Avenue, Hollywood, Los Angeles County, Cal. The locations of its principal places of business are: 1414 Cole Place, Hollywood, California

Third—The address of the proposed registered office in the State of Illinois will be located at Suite 1532, 33 N. La Salle street in the city of Chicago (2 Zone) Illinois, and the name of its proposed registered agent in this State at such address is: SAMUEL B. BLANKSTEN

PAID
FEB 4 1955
Charles S. Carpentier
Secretary of State

Fourth—The corporation is transacting business and qualified under the foreign corporation laws of the following states and countries other than Illinois:

New York
California

Fifth—The names of its officers and directors and their addresses are as follows:

	NAME	City and State	Street and No.
President	BEN FULLMAN	Hollywood, Cal.	1414 Cole Place
Secretary	BEATRICE M. FULLMAN	Hollywood, Cal.	1414 Cole Place
Director	SIDNEY B. FULLMAN	Chicago, Ill.	845 S. Wabash Ave.
Director	ELLIOT S. FULLMAN	New York, N.Y.	203 E. 36th Street
Director	NORVIN E. FULLMAN.	New York, N.Y.	203 E. 36th Street
Director	BEN FULLMAN	Hollywood, Cal.	1414 Cole Place
Director			
Director			

Sixth—The purpose or purposes for which it was organized which it proposes to pursue in the transaction of business in this State are:

(a) That said corporation shall primarily engage in a general messenger and delivery service.

(b) To purchase, take and lease, exchange or otherwise acquire any real or personal property, rights or privileges convenient for any of the purposes of this business, and to purchase or acquire anything necessary or useful for the conduct of the business as above specified.

(c) To borrow or raise money for any purposes of the company and to secure the same and interest, or for any other purpose, to mortgage all or any part of the property corporeal or incorporeal rights or franchises of this company now owned or hereafter acquired, and to create, issue, draw and accept and negotiate bonds and mortgages, bills of exchange, promissory notes or other obligations or negotiable instruments.

(d) And further to do and perform and cause to be done or performed such, any and all of the acts and things above enumerated and any and all other acts and things insofar as the same may be incidental to or included in any or all of the general powers given, always provided on the grant of the foregoing enumerated powers is upon the express condition precedent, that the various powers as enumerated shall be exercised by the said company only in case the same are authorized to be exercised by the acts above recited under which said company is organized and the same shall be exercised by said company only in the manner and to the extent that the same may be authorized under the said acts above recited under which it was organized.

(e) To enter into, make, perform and carry out contracts of every kind and to engage in any lawful business without limitation or otherwise with any person, firm, association or corporation.

Nothing herein contained shall be deemed to include the discounting of bills and notes or the buying and selling of bills of exchange.

Seventh—The number of shares which it has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, is:

Class	Series (if any)	Number of Shares	Par value per share or statement that shares are without par value
Common	None	100	$100.00 par value per share

Eighth—The number of its issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, is:

Class	Series (if any)	Number of Shares	Par value per share or statement that shares are without par value
Common	None	100	$100.00 par value per share

(NOTE: "Issued" shares, as used above, include (1) "outstanding" shares, and (2) all shares which have been issued and repurchased or redeemed by the corporation, but not cancelled of record in the home State.)

Ninth—The amount of stated capital and the amount of paid in surplus of the corporation as defined by "The Business Corporation Act" of Illinois, is:

(Note: If no Paid in Surplus, insert "None")

Stated Capital	$ 10,000.00
Paid in Surplus	$ None
Total	$ 10,000.00

*Tenth—Give an estimate of the total value of all the property of the corporation for the following year $ 10,000.00

Eleventh—Give an estimate of the total value of all the property of the corporation for the following year that will be located in Illinois $ 2,000.00

Twelfth—State the estimated total business of the corporation to be transacted by it everywhere for the following year $ 300,000.00

Thirteenth—State the estimated annual business of the corporation to be transacted by it at or from places of business in the State of Illinois $ 50,000.00

Fourteenth—

INTERROGATORIES:

(a) Is the corporation actually transacting business at the present time in the State where it was organized? Yes

(b) From what office will the affairs of the corporation be managed? Hollywood, California

(c) To what office or offices will all contracts with the corporation be forwarded for final acceptance? Hollywood, Cal.

(d) At what office or offices will the directors and stockholders meeting be held? Hollywood, Cal.

(e) The number of shares of all classes owned by residents of Illinois is: Twenty (20)

(f) The number of shares of all classes owned by non-residents of Illinois is: Eighty (80)

(g) Is the corporation transacting business in this State at this time? Yes

(h) If your answer is in the affirmative, state the exact date on which it commenced to transact business in Illinois: 1/20/55

*PROPERTY as used in this application shall apply to all property of the corporation, real, personal, tangible, intangible, or mixed without qualification.

5

IN WITNESS WHEREOF, the undersigned corporation has caused this report to be executed in its name by its President attested by its Secretary, this 31st day of January, A.D. 19 55.

CITY MESSENGER OF HOLLYWOOD (INC.)
(Exact Corporate Title)

By Ben Fullman
President ~~or Vice-President~~

Place (Corporate Seal) Here

Attest: Beatrice M. Fullman
Secretary or Assistant Secretary

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

I, RUTH E. MARSHALL, a Notary Public, do hereby certify that on the 31st day of January, A.D. 19 55, personally appeared before me BEN FULLMAN, who declares he is President of the corporation, executing the foregoing document, and being first duly sworn, acknowledged that he signed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

Ruth E. Marshall
Notary Public

Place (Notarial Seal) Here

Form J

Box 1026 File 26701

APPLICATION FOR CERTIFICATE OF AUTHORITY OF FOREIGN CORPORATION

CITY MESSENGER OF HOLLYWOOD (INC.)

Note: This form may be used in applying for either an original or an amended certificate of authority. Applications must be accompanied by one copy of the Articles of Incorporation and all amendments duly authenticated by the proper officer of the State or Country [illegible] is incorporated.

FILED

FEB -4 1955

Charles S. [illegible]

[illegible]

(File in Duplicate)

Filing Fee $20.00, plus license fee and franchise tax

Form J (2182—5M—8-54)